FILE COPY

OFFICE SUPREME COURT, U.S.
FILED
JAN
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 636

LOUIS VAN [illegible],

Petitioner,

—against—

STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

FRANCES KAHN
Member of the Bar of the Supreme Court of the United States
Office & P. O. Address
401 Broadway
New York City-10, New York
WOrth 6-4240

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented:	
1. Whether petitioner was denied due process when he had been denied a speedy trial as guaranteed by the Sixth Amendment of the United States Constitution	2
2. Whether the deprivation of petitioner's right to a speedy trial in the New York Courts, is such a fundamental principle of liberty and justice as to come within the due process clause of the Fourteenth Amendment of the United States Constitution	2
Procedural History of Case	3
Statement of the Case	4
Reasons for Granting Certiorari:	
The defendant was prejudiced by a denial of his right to a speedy trial in violation of the Sixth Amendment and Fourteenth Amendment of United States Constitution	8
Conclusion	48
Appendix A—	
Amended Order on Remittitur	49
Appendix B—	
Motion for Reargument and to Amend Remittitur	56

PAGE

APPENDIX C—

Opinion of Appellate Division, First Department 57

AUTHORITIES CITED

Ex parte Altman (1940), 34 F. Supp. 106 ..... 20, 39
Arrowsmith v. State, 175 S. W. 545 44

Berkihiser v. State (1950), 92 Okla. Crim. 31, 219 P. 2d 1020 25
Breedlove v. State (1955), 225 Ark. 170, 280 S. W. 2nd 224 ..... 24, 27

Campodonico v. U. S. (1955), 222 F. 2d 319 cert. den. 76 S. Ct. 65. 36
Casper v. Wagner (1955), 284 P. 2d 409 31
Ex parte Chalfant, 93 S. E. 1032 44
Chinn v. U. S. (1955), 228 F. 2d 151 21
Com. ex rel. Haggerty v. Superintendent of Philadelphia County Prison (1869), 4 Brewst. (Pa.) 320 27
Commonwealth v. Smahal (1956), 182 Pa. Super. 232, 126 A. 2d 523 ..... 23, 28, 31
Commonwealth ex rel. Sell v. Burke (1953), 174 Pa. Super. 344, 101 A. 2d 174 25

Danziger v. U. S. (1947), 161 F. 2d 299, cert. den. 322 U. S. 769 21
D'Aquino v. U. S. (1951), 192 F. 2d 338, cert. den. 343 U. S. 935 24
De La Mar v. Superior Court, 71 P. 2d 96 32

Ellenwood v. Cramer (1954), 75 Idaho 338, 272 P. 2d 702 ..... 25, 27

PAGE

Ferguson v. Beckly (1938), 224 Iowa 1049, 277 N. W. 755 26
Flanary v. Commonwealth, 35 S. E. 2d 135 44
Fouts v. U. S. (1958), 253 F. 2d 215 35
Fowler v. Hunter (1947), 164 F. 2d 668, cert. den. 333 U. S. 868 25
Frankel v. Woodrough, 8 Cir. 1225, 7 F. 2d 796, 798 ..... 39, 40
Fulton v. State, 12 S. W. 2d 777 44

Re Garner (1931), 134 Kan. 510, 5 P. 2d 821 ..... 30, 41
Gerardino v. Porto Rico (1928), 29 F. 2d 517 24
Germany v. Hudspeth (1954), 209 F. 2d 15, cert. den. 347 U. S. 946 24
Goss v. State (1955), 161 Tex. Crim. 37, 274 S. W. 2d 697 31

Harbaugh v. State (1955), 234 Ind. 420, 126 N. E. 2d 576 25
Harris v. Municipal Court 13
Harris v. State (1950), 194 Md. 288, 71 A. 2d 36, 38 ..... 22, 23, 44
Harris v. State (1951), 65 S. E. 367, 285 P. 699 13
Howell v. Commonwealth (1947), 186 Va. 894, 45 S. E. 2d 165 26

Johnston v. Zerbst, 304 U. S. 458, 464 ..... 18, 29

Keegan v. District Court (1946), 237 Iowa 1186, 24 N. W. 2d 791 27
Kelly v. State (1951), 54 So. 2d 431 30
Kyle v. U. S. (1954), 211 F. 2d 912 36

Leggett v. Kirby (1960), 331 S. W. 2d 267, cert. den. 80 S. Ct. 1073 38

PAGE

Levine v. U. S. (1950), 182 F. 2d 556, cert. den. 340 U. S. 921 21
Loy v. Grayson (1957), 99 So. 2d 555 42

Maher v. State (1944), 144 Neb. 463, 13 N. W. 2d 641, cert. den. 323 U. S. 757 30
McCandless v. District Court (1953), 61 N. W. 2d 674 ..... 23, 24, 30
Ex parte McCollum (1949), 212 P. 2d 161 22
Ex parte McGehan (1872), 22 Ohio St. 442 30
Ex parte Meadows (1941), 71 Okla. Crim. 353, 112 P. 2d 419 23
Re Morgan (1929), 57 N. D. 763, 224 N. W. 209 26

Ex parte O'Hara, 89 Okla. Crim. 250, 206 P. 2d 592 28
Osborne v. Owsley (1953), 257 S. W. 2d 691 22

Parker v. U. S. (1958), 252 F. 2d 680, cert. den. 78 Sup. Ct. 1003 35
People v. Brame (1955), 6 Ill. 2d 412, 128 N. E. 2d 911 ..... 22, 25, 27
People v. Corrado, 270 N. Y. S. 235, 237, 239 44
People v. Chirielson (1957), 3 N. Y. 2d 70 12
People v. Den Uyl (1948), 320 Mich. 477, 31 N. W. 2d 699 20
People v. Exter (1956), 4 Mich. 2d 651 12
People v. Foster (1933), 261 Mich. 247, 246 N. W. 60 30
People v. Gede (1924), 226 P. 934 26
People v. Godwin, 2 N. Y. 2d 891, affg. 2 A. D. 2d 846 19
People v. Goldman (1960), 204 N. Y. S. 2d 770 19
People v. Iasello (1951), 410 Ill. 252, 102 N. E. 2d 138 26
People v. Kraemer (1958), 177 N. Y. S. 2d 425 37
People v. Lind (1924), 68 Cal. App. 575, 229 P. 990 29
People v. Morris (1954), 3 Ill. 2d 437, 121 N. E. 2d 810 23

PAGE

People v. Mudra (1958), 12 Misc. 2d 438 13
People v. Perry (1949), 196 Misc. 922, 96 N. Y. S. 2d 517 ..... 25, 28
People v. Phillips (1958), 14 Misc. 2d 565 15
People v. Piscitello (1960), 7 N. Y. 2d 387 ..... 18, 37
People v. Prosser (1955), 309 N. Y. 353 ..... 11, 13, 14, 16, 17, 28, 44, 45, 46, 47
People v. Roberts (1958), 11 Misc. 2d 957 12
People v. Schmagien, 198 N. E. 142 32
People v. Schwartz (1958), 6 App. Div. 2d 459 12
People v. Serio (1958), 13 Misc. 2d 973 13
People v. Setuta (1958), 12 Misc. 2d 279 12
People v. Sweeney (1951), 409 Ill. 223, 99 N. E. 2d 143 30
People v. Szobor, 195 N. E. 648 ..... 32, 41
People v. Tahtiner (1957), 150 Cal. App. 2d (Adv. 346), 309 P. 2d 497 ..... 24, 27
People v. Von Cseh, 8 N. Y. 2d 993, 205 N. Y. 2d 329 ..... 1, 2, 4
People v. Von Cseh, 9 A. D. 2d 660, 191 N. Y. S. 2d 699, 8 N. Y. 1058 1
People v. White, 2 N. Y. 2d 220 ..... 19, 22, 27
People v. Wilson (1957), 5 App. Div. 2d 690 14
People v. Wilson, Law Report News Dec. 12, 1960 Page 2, otherwise unreported, N. Y. Ct. of Appeals reversing 206 N. Y. S. 2d 792 ..... 13, 45
People v. Winter (1958), 182 N. Y. S. 2d 254 ..... 13, 17, 18
Petition of Provoo, D. C., 17 F. R. D. 183, 198, affirmed 350 U. S. 857 ..... 13, 18, 21, 29
Pietch v. U. S., 110 F. 2d 817, 819 44
Pines v. District Court (1943), 233 Iowa 1284, 10 N. W. 2d 574 22
Pollard v. U. S. (1957), 77 S. Ct. 481 34

Randolph v. State (1954), 234 Ind. 57, 122 N. E. 2d 860, cert. den. 350 U. S. 889 22

PAGE

Re Sawyer's Petition (1956), 229 F. 2d 805, cert. den. 351 U. S. 966 25
Respublica v. Arnold (1801), 3 Yeates Pa. 263 27

Scott v. State (1955), 113 A. 2d 880, cause removed on reargument, 117 A. 2d 831 37
Shepard v. U. S. (1941), 163 F. 2d 974 ..... 21, 23
Ex parte State ex rel. Atty. Gen. (1951), 255 Ala. 443, 52 So. 2d 158 29
State v. Artz, 191 N. W. 605 32
State v. Banks (1903), 111 La. 22, 35 So. 370 30
State v. Beckwith (1944), 57 N. E. 2d 193 38
State v. Bohn (1926), 67 Utah 362, 248 P. 119 31
State v. Bond, 271 S. W. 379 32
State v. Boynton (1948), 143 Me. 313, 62 A. 2d 182 ..... 22, 23, 30
State v. Braathen (1950), 77 N. D. 309, 43 N. W. 2d 202 28
State v. Bradford, 217 La. 32, 45 So. 2d 897 26
State v. Carrillo (1932), 16 P. 2d 965 ..... 42, 44
State v. Clark, 168 P. 944 32
State v. Dinger (1924), 51 N. D. 98, 199 N. W. 196 30
State v. Hess (1956), 180 Kan. 472, 304 P. 2d 474 ..... 22, 23, 27
State v. Hulsinger (1956), 42 N. J. Super. 224, 126 A. 2d 47 ..... 22, 30
State v. Keefe, 17 Wyo. 227, 257-259, 98 P. 122 44
State v. Lamphere (1905), 20 S. D. 98, 104 N. W. 1038 31
State v. Lightfoot (1925), 235 P. 843 25
State v. Lydon (1952), 40 Wash. 2d 88, 241 P. 2d 202 26
State v. McTague (1957), 173 Minn. 153, 216 N. W. 787 30
State v. Nolan (1943), 171 S. W. 2nd 653 ..... 25, 28
State v. Polan (1954), 78 Ariz. 253, 278 P. 2d 432 26
State v. Sawyer (1953), 56 N. W. 2d 811, cert. dismd. 346 U. S. 801 31
State v. Schnell (1939), 107 Mont. 579, 88 P. 2d 19 30
State v. Shaw (1949), 69 Idaho 365, 207 P. 2d 540 22

PAGE

State v. Smith, 10 N. J. 84; 89 A. 2d 404 44
State v. Stanley (1956), 179 Kan. 613, 296 P. 2d 1088, cert. den. 352 U. S. 851 26
State v. Tyre (1907), 22 Del. (6 Penn.) 343, 67 A. 139 30
State v. Williams (1954), 73 So. 2d 295 27
State v. Woods (1940), 346 Mo. 538, 142 S. W. 2d 87 25
State ex rel. Borberg v. District Court (1952), 125 Mont. 481, 240 P. 2d 854 26
State ex rel. James v. Superior Court (1949), 32 Wash. 2d 451, 202 P. 2d 250 26
State ex rel. Underwood v. Brown (1951), 193 Tenn. 113, 244 S. W. 2d 168 ..... 23, 28, 31
Stevenson v. U. S. (1960), 278 F. 2d 278 34

Taylor v. United States (1956), 99 App. D. C. 183, 238 F. 2d 259 ..... 27, 28, 36
Taylor v. United States, 283 F. 2d 259, 261 18
Re Trammer (1912), 35 Nev. 56, 126 P. 337 30
Tutt v. Warden (1952), 199 Md. 691, 87 A. 2d 523 30

U. S. v. Alagia (1955), 17 F. R. D. 15 ..... 23, 24
U. S. v. Chase (1955), 135 F. Supp. 230 ..... 34, 36
U. S. ex rel. Coleman v. Cox, 47 F. 2d 988 32
U. S. v. Dillon (1958), 183 F. Supp. 541 ..... 34, 36
U. S. ex rel. Hanson v. Ragen (1948), 166 F. 2d 698, cert. den. 334 U. S. 49 ..... 23, 26
U. S. v. Kaye (1958), 251 F. 2d 87, cert. den. 78 S. Ct. 919 35
U. S. v. Pack (1957), 20 F. R. D. 209, appeal dismissed 37
U. S. v. Postma (1957), 242 F. 2d 488 26
U. S. v. Stein (1955), 18 F. R. D. 17 36

Ware v. State (1941), 219 Ind. 217, 36 N. E. 2d 787 26
Westover v. State (1947), 66 Ariz. 145, 185 P. 2d 315 ..... 22, 27

PAGE

Williams v. State (1946), 210 Ark. 402, 196 S. W. 2d 489 29
Woodall v. State (1920), 25 Ga. App. 8, 102 S. E. 913 ..... 25, 27

CONSTITUTIONAL PROVISIONS AND STATUTES

28 U. S. C. A. §1257(3) 2
Civil Rights Law §212 18
Habeas Corpus Act, 31 Car. II, Ch. 2 ..... 38, 39
N. Y. State Code of Crim. Proc. §8 ..... 43, 46
N. Y. State Code of Criminal Procedure §668 ..... 11, 13, 18, 19, 43, 44
N. Y. State Penal Law §887 3
N. Y. State Penal Law §1290-a 3, 7
N. Y. State Penal Law §1294 3
United States Constitution, Sixth Amendment 2, 8, 18, 21, 31, 35, 39, 40
United States Constitution, Fourteenth Amendment 2, 8

RULE

Rule 48, Federal Rules of Crim. Proc. 41

MISCELLANEOUS

22 C. J. S., Criminal Law §466 (1940) 42
Law Report News, December 12, 1960, p. 2 ..... 13, 45
Magna Carta 38
Report of Commissioners on Practice and Pleading (1849), p. 342, quoted in McKinney's Consol. Laws of N. Y., Book 66, Pt. 2, Code Crim. Proc. (1945 Ed.), p. 553 43

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. .....

LOUIS VON CSEH,

Petitioner.

—against—

STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York, entered in the above entitled case on October 13, 1960, 8 N. Y. 2d 1058.

Opinions Below

No opinion was rendered by the Trial Court. An opinion was rendered by the Appellate Division, First Judicial Department, 9 A. D. 2d 660, 191 N. Y. S. 2d 699.

No opinion was rendered by the Court of Appeals of the State of New York, 8 N. Y. 2d 993, 205 N. Y. S. 2d 329. The appendix annexed hereto contains the opinion of the Appellate Division below. A motion to amend the remittitur and for reargument was made in the Court of Appeals. The order on remittitur (Appendix A) was amended (Appendix B).

Jurisdiction

The judgment of the New York State Court of Appeals was pronounced on the 6th day of July, 1960, and on October 13, 1960, the New York State Court of Appeals granted petitioner's application to amend the remittitur (see Appendix) and stated the following: [8 N. Y. 2d 1058, 1059].

> "Motion to amend remittitur granted. Return of remittitur requested and, when returned, it will be amended by adding thereto the following: Upon the appeal herein it was presented and necessarily passed upon and alleged question under the Constitution of the United States, viz.: 'Defendant contended that the right to a speedy trial as guaranteed by the Constitution of the United States was denied to him. The Court of Appeals held that there was no such denial and that there was no substance or merit to defendant's contentions. [See 8 N. Y. 2d 993.]"

The jurisdiction of this Court is invoked under 28 U. S. C. A. §1257 (3).

Questions Presented

The questions presented for review are:

1. Whether petitioner was denied due process when he had been denied a speedy trial as guaranteed by the Sixth Amendment of the United States Constitution.

2. Whether the deprivation of petitioner's right to a speedy trial in the New York Courts is such a fundamental principle of liberty and justice as to come within the due process clause of the Fourteenth Amendment of the United States Constitution.

Procedural History of Case

Petitioner was convicted of 25 crimes of grand larceny in the first degree under Section 1294 of the Penal Law, Consol. Laws, c. 40, and of four crimes of forgery in the second degree under Section 887 of the Penal Law. The Court of General Sessions, New York County, Irwin Davidson, J., rendered judgment, and the defendant appealed.

The Appellate Division modified the judgment of conviction by reversing the larceny counts and dismissed the larceny counts, and affirmed the judgment as modified, and held that larceny convictions could not stand because defendant made use of alleged false representations in course of accomplishing, or in aid of, or in facilitating the theft within meaning of Section 1290-a of the Penal Law, and that even if false pretenses were used in connection with a scheme, which aborted prior to commission of the larcenies alleged, the only material deviation from such scheme was defendant's unilateral ouster of his colleagues, and that thus the false representations constituted an integral part of the embezzlement eventually committed and were adopted by defendant in order to accomplish the crime charged, and that since larceny counts contained no allegations of any false representations, proof of them was inadmissible to sustain the larceny counts, and that evidence sustained convictions under the forgery counts.

Both the People of the State of New York and the defendant appealed to the Court of Appeals.

The People of the State of New York contended in the New York State Court of Appeals that the defendant's convictions of grand larceny were fully supported by competent and legally admissible evidence, and that his conviction of forgery were proper in fact and in law, and that charge

was proper in all respects, and that *defendant's right to a speedy trial was not impaired.* The defendant contended in the Court of Appeals that the Appellate Division correctly reversed and dismissed all of the larceny counts, and that Court of General Sessions erred in admitting evidence of false pretenses in connection with forgery counts, *and that defendant was prejudiced by a denial of his right to a speedy trial.* The order and judgment was affirmed July 8, 1960, without opinion. (*People* v. *Von Csch*, 8 N. Y. 2d 993, 205 N. Y. S. 2d 329.)

Statement of the Case

The petitioner, an American citizen, together with two citizens of India, one Mathur and one Chandrapal Singh, entered into a plan designed to enable them to profit through certain dealings with the provincial governments of two Indian states, Jaipur and East Punjab.

In furtherance of this plan, two corporations were organized in India. The first, called Man Radio & Electricals, Limited (hereinafter referred to as "Radio"), consisted of the aforesaid three incorporators, as well as a number of other stockholders, who invested some $50,000 of capital in the company (557).* The second corporation, called Man Investors, Limited (hereinafter referred to as "Investors"), consisted solely of three people—the defendant, Mathur and Chandrapal Singh (598); Investors had no other officers, directors or stockholders. A contract was then entered into, in India, between these two corporations, whereby Investors became the "managing agent" of Radio (Peo's. Exh. 13; 722). Perusal of this contract establishes

* Figures in parentheses, unless otherwise indicated, refer to folios of the printed Record on Appeal from the judgment of conviction in the New York Court of Appeals.

that a virtual "blank check" was accorded to Investors by Radio. As managing agent, Investors was expressly given literally unlimited powers to do anything at all with the assets and business of Radio, and to bind it to any course of conduct.

Contracts providing for the erection of certain electrical plants and equipment for the governments of Jaipur and East Punjab were then obtained by Radio, apparently through the discreet exertion of influence. The fact that Chandrapal Singh, one of the three principals of Investors, was a cousin of the Maharajah of Jaipur was not without significance in this phase of the operations (608).

Pursuant to the terms of these contracts, Radio was to purchase, transport and erect the requisite machinery for several power plants, in return for specified payments. The greatest portion of the funds required to purchase and ship the machinery to India was supplied by the Jaipur government in advance (632), by establishing letters of credit with the National City Bank. These letters of credit totalled well in excess of a million dollars (1234), and were in favor of Indus International, Inc. (hereinafter referred to as "Indus"), a New York company.

Indus appeared on the scene in the following manner: The defendant Von Cseh was dispatched to New York by his Indian associates with instructions to obtain the services of a purchasing agent in New York (1070). Indus was in the business of acting in that capacity for other Indian concerns, and was apparently qualified to perform the required services. Von Cseh accordingly selected Indus as such purchasing agent.

Indus then proceeded to purchase the necessary equipment, by drawing against the letters of credit; the machinery purchased was sent to India. However, an integral

part of the scheme originally conceived in India by the three principals was that the invoices presented to the bank should be submitted in increased, or padded, amounts, including sums over and above those actually required by the vendors and suppliers of the equipment (1227). The scheme envisioned that the resulting excess funds should redound to the personal benefit of the three men. These plans were never divulged by the plotters to Radio, or its stockholders, or to its officers. Indus, when apprised of the fact that it would be expected to present increased invoices to the bank, did not demur, and proceeded to carry out its assigned part. The bank, presented with the padded invoices, was deceived, and in reliance thereon, made payments to Indus pursuant to the letters of credit, until the available funds were exhausted. The surplus funds, above those actually required to pay suppliers of equipment, continued to accumulate with Indus.

Anticipating the creation of this surplus, Mathur and Chandrapal Singh, on behalf of Investors, forwarded a letter to Indus, authorizing in advance "all the financial arrangements which Mr. Louis Von Cseh makes regarding the amount left over and above the purchase price of the power plant" (815). Pursuant to this authorization from all the other interested parties in Investors, in addition to himself, the defendant wrote to Indus, requesting that such surplus amounts be deposited in the personal joint checking account of the defendant and his wife, maintained in the Bankers Trust Company. These instructions were carried out by Indus, so that ultimately a total of approximately $230,000 was deposited in the personal Von Cseh joint account.

Thereafter, the defendant, from time to time, withdrew portions of these sums from his own account. It is the theory of the prosecution that these withdrawals from his

own account constituted the larcenies with which the defendant was charged (314-5).

At the trial, the defense rested upon the People's case. It was maintained by the defendant that, if any violation of the larceny laws was revealed by the foregoing facts, it could only be the crime of larceny by false pretenses arising from the use of the padded invoices. The vice of the prosecution, according to the defense theory, lay in the fact that no false pretenses whatsoever were alleged in the indictment, and it is clear that, absent such allegations, proof of false pretenses is inadmissible at the trial and prejudicial (Penal Law, §1290-a).

A hint as to why the prosecution felt constrained to adopt the strained and absurd position that it mattered not how the money was originally obtained or from whom, and that any subsequent withdrawal from the defendant's own personal bank account was a larceny by him from the corporation, is found in the fact that the statute of limitations had clearly run as to the crime of obtaining money by false pretenses, but by harking back only to the more recent time when the defendant withdrew the money from his account, a period within the statute of limitations could be arrived at. This position, however, leads to the manifest absurdity that the wrongful scheme of the defendant and his associates to pad bills and invoices, and keep the "overages" for themselves, was legal, while the later withdrawal of the excess funds from the defendant's own account, where they were in the complete control and dominion of the defendant, pursuant to specific written authorization from the duly appointed corporate managing agent, could be a larceny from Radio. Yet this was the People's position (314-5, 320, 324, 325).

The type of "larceny" described above accounts for most of the counts of the indictment. These were all dismissed

by the Appellate Division. A few final counts deal with alleged forgery, and with uttering of a forged document. The trial court committed serious errors, affecting each of these forgery convictions, and accordingly, we contend, reversal of all the remaining counts should be ordered by this Court.

A motion to dismiss the indictment for being deprived of a speedy trial was made by petitioner and denied with leave to renew (256-264). The application was renewed on May 22, 1957 (303-305) but was denied by the trial court. The issue of denial of a speedy trial was adequately preserved in all appellate courts.

The foregoing brief recital of the evidence and motion are designed merely as a frame of reference for the contentions which follow. There is little need to dispute the facts since the real dispute arises as to the legal consequences of the facts shown. As to these, the trial and appellate courts ruled erroneously.

Reasons for Granting Certiorari

The defendant was prejudiced by a denial of his right to a speedy trial in violation of the Sixth Amendment and Fourteenth Amendment of United States Constitution.

The indictment, relating to transactions that occurred in 1948 and 1949, was returned on October 15, 1953 (66). The defendant pleaded not guilty on October 19, 1953 (67). It was not until the very end of May 1957, 43 months after the indictment was returned and more than 91 months after the alleged transactions occurred, that the trial was commenced.

The only serious argument which the People urge as to why this indictment should not be dismissed for failure to

grant the defendant a speedy trial, was that the defendant *once* sought a reasonable delay in the prosecution of the trial.

Where a defendant has once sought an adjournment, the courts have sometimes held that he may be deemed to have waived his right to protest against a later delay in the trial of his case. The question here presented is whether this is a cast-iron rule, of which the prosecution may avail itself to the prejudice of a defendant regardless of what equities may appear, or whether the court will exercise its discretion to prevent this generally valid rule from becoming a tool of injustice.

In this case, seven days after the indictment was returned, and only three days after the defendant pleaded not guilty, the prosecution moved to bring the defendant to trial. In view of the complicated nature of the case, which involved a 31-count indictment, the defense had no alternative but to seek one reasonable delay for preparation. Thereafter, the defense acted in every way to seek an early trial. On November 13, 1953, within 29 days from the return of the indictment, the defendant moved for a bill of particulars, which was granted in part. On April 20, 1954 the defense moved for an inspection of the grand jury minutes, which was denied. At the time the prosecution first moved to bring the defendant to trial, on October 22, 1953, two important witnesses from India were present in New York, having come here to testify before the grand jury. In order to prevent any inconvenience to the People, or to these witnesses, the defense went so far as to agree that the testimony of these Indian witnesses, then present in New York, should be taken conditionally. Accordingly their testimony was taken on November 9, 10, 12 and 17, 1953 (69-73). Thereafter the taking of their testimony was discontinued

on motion of the prosecution as it developed that the prosecutor would be unable to complete the examination.

Throughout the history of the case the defendant moved expeditiously. He repeatedly asked for trial, vigorously protesting each of the repeated adjournments after October 22, 1953. In April, 1956 the defendant moved in the alternative either to dismiss for lack of prosecution, or to compel a speedy trial. The prosecutor had repeatedly stated in court that he was ready to proceed except for the fact that Mathur, a witness, was in India. Nothing prevented the witness Mathur from appearing except his own desires. The reason for Mathur's failure to appear was clearly brought out at the trial on cross-examination, wherein he admitted that he had been making efforts to obtain a money settlement from the defendant. In fact; as stated, there was a civil lawsuit pending against the defendant in the Supreme Court, New York County (3051). The suit was dismissed.

In denying the defendant's motion for a dismissal for lack of prosecution or to compel a speedy trial, Judge McCullen, of General Sessions Court, New York County, noting the prosecution's delay, wrote as follows (261-4):

> "On April 11, 1956 the defendant moved to reduce his bail, in as much as he had been under indictment for a period of more than two years, had continuously resided in this City, was ready to proceed to trial, and was waiting for the District Attorney to produce the necessary witness. Since the District Attorney was not then ready, the bail was reduced to $1500. The District Attorney stated in Court at that time that he expected to have his witness in New York in October and would be ready to proceed to trial at that time. Come October 1956, the District Attorney stated he was not then ready

because his witness was not in New York and stated he is in receipt of the communication from that witness to the effect that he does not expect to be in New York until April 1957.

"The District Attorney states the indictment by which this defendant is charged with specific crimes is a meritorious one and should proceed to trial. I appreciate the difficulty the District Attorney is having with his witness who is not in this country. However, the rights of the plaintiff [*sic*] must also be protected. This motion is denied with leave to renew on or about April 10, 1957. If the case does not then proceed to trial, the indictment should be dismissed. I make this qualified latter statement for the reason that I will not be a Judge of the Court of General Sessions beyond January 1, 1957 and I believe I have no right to bind any other Judge of this Court in his judicial endeavors."

In April 1957, the case again appeared on the trial calendar. Despite Judge McCullen's order, and over defendant's vigorous objections, another judge in the part granted another adjournment (2912). The trial was not commenced until the end of May, 1957, almost four years after the indictment was returned. We submit that these adjournments and the late trial flew in the face of Judge McCullen's finding that any delay after April 10, 1957, would be an inordinately lengthy and prejudicial one, and should require a dismissal of the indictment. A motion for dismissal on this ground was made at the outset of the trial (303-7).

In *People* v. *Prosser* (1955), 309 N. Y. 353, the New York Court of Appeals set forth the reasons underlying the basic right to a speedy trial and concisely stated the rule as follows (p. 357):

"It is clear, then that Prosser was entitled to a speedy trial, and it is equally clear that he did not receive

one. Although what amounts to an undue delay is 'not fixed by the statute in days or months', depending as it does 'upon the circumstances of each particular case' (cit. cases), it may not seriously be urged that the six-year lag in the present case was consistent with the mandate for a speedy trial."

We submit that in the instant case, as in the *Prosser* case, it "may not seriously be urged" that the "lag" was "consistent with the mandate for a speedy trial." The defendant here was not brought to trial until 43 months after the indictment was returned. In the following cases the indictment was dismissed, pursuant to Section 668, upon the ground that the defendants were deprived of their right to a speedy trial.

People v. *Chirieleison* (1957), 3 N. Y. 2d 70. Robbery, grand larceny; 5 years between indictment and trial;

People v. *Schwartz* (4th Dep't, 1958), 6 App. Div. 2d 459. Robbery; 43 months between indictment and trial;

People v. *Setura* (Co. Ct. Queens Co., 1958), 12 Misc. 2d 279. Grand larceny; 38 months between indictment and arraignment;

People v. *Roberts* (Co. Ct. Kings Co., 1958), 11 Misc. 2d 957. Robbery, assault, grand larceny; 23 months between indictment and arraignment;

People v. *Exter* (Co. Ct. Queens Co., 1956), 4 Misc. 2d 651. Robbery, assault, grand larceny; 18 months for 1 defendant, and 26 months for 2 other defendants, between indictment and arraignment;

People v. *Goldman* (Co. Ct. Nassau Co., 1960), 204 N. Y. S. 2d 770. A 6 months delay in bringing defendant to trial, between indictment and arraignment.

People v. *Wilson*, decided November 30, 1960, by New York State Court of Appeals, not reported to date except in Law Report News, *infra;* reversing 200 N. Y. S. 2d 792, 10 A. D. 2d 297. Sixth Amendment to United States Constitution now restricts powers of state courts.

There is no requirement that a defendant make any showing of prejudice, in order to assert his constitutional right to a speedy trial. Thus in *People* v. *Winter* (Ct. Gen. Sess., N. Y. Co., 1958), 182 N. Y. S. 2d 254 (not officially reported), the People claimed that the defendants had failed to establish that they had been prejudiced by the delay. The Court held, however, that the defendants were not required to show prejudice (p. 267):

> "Moreover, a defendant is not required to show prejudice (Petition of Provoo, D. C., 17 F. R. D. 183, 198, affirmed 350 U. S. 857 . . .), and, in fact, the element of prejudice is presumed from the excessive delay (People v. Prosser, supra); and see also Harris v. Municipal Court, . . . 285 P. 699, where it was stated: 'Furthermore, it is not necessary that the party accused affirmatively show prejudice. Prejudice will be presumed from the violation of this constitutional right. It is enough for the defendant to show that the prosecution has been unreasonably delayed.'"

The petitioner here did everything in his power to seek a speedy trial, but even this action is well beyond any burden which rests upon a defendant. A defendant has no duty to come forward and seek a speedy trial in order to avail himself of his constitutional privilege. Thus in *People* v. *Serio* (Co. Ct. Erie Co., 1958), 13 Misc. 2d 973, the defendant was imprisoned in California and not available for arrest and trial and the time he was indicted for grand larceny in October 1946. The defendant later returned to Buffalo and resided there openly up to the date of his arrest in

1958. Judge Burke considered the question was whether the defendant had a duty to announce his readiness for trial to the District Attorney, and held that the defendant was entitled to have the indictment dismissed since there was no duty during the period in which he was in the City of Buffalo to announce his availability, and his failure to do so could not be deemed a waiver of his right to a speedy trial.

Where the delay in trial exceeds the period contemplated by Section 668 the defendant is automatically entitled to a dismissal unless the People are able to show "good cause" for the delay. Thus in *People* v. *Mudra* (Co. Ct. Queen Co. 1958), 12 Misc. 2d. 438, the court held that the period of delay of not quite 14 months was sufficient to entitle the defendant to a dismissal and that it would not indulge any presumption that the delay was for a good cause (p. 439):

> " . . . where it exceeds the period contemplated by the statute the defendant is entitled to a dismissal 'unless good cause to the contrary be shown'. . . . There is no presumption that it was for good cause. . . . The burden of proving such cause—and thus, that the delay was not 'undue'—is on the prosecution. (*People* v. *Prosser*, *supra*, p. 358. . . .) It is presumed that the defendant was prejudiced by the delay. . . . Consequently, the delay in this case entitled defendant to a dismissal of the indictment."

Similarly, in *People* v. *Wilson* (2d Dep't. 1957), 5 App. Div. 2d 690, an appeal from a conviction of appellant upon his plea of guilty of attempted robbery in the third degree, the court dismissed the indictment, holding that the People had failed to sustain "its burden of showing good cause" for a delay of 21 months between the filing of the indictment and appellant's arraignment.

The only possible justification available to the district attorney for the unreasonable and lengthy delay herein is that two of his witnesses were not present in New York from 1954 to 1957. The courts have held such excuse to be insufficient. Thus in *People* v. *Phillips* (Sup. Ct., Suffolk Co., 1958), 14 Misc. 2d 565, the Court stated:

> "The prosecutor's ability to bring Phillips to trial depends entirely upon the availability of both Casino and Updike, neither of whom are presently at his disposal. Casino is seriously ill and there is no indication when, if ever, he may be permitted to testify. Updike is beyond the jurisdiction of the court . . .
>
> ". . . Where, as in this case, after a lapse of nineteen months following the indictment the court is firmly of the opinion that the totality of the evidence establishes that the requirement for a speedy trial cannot be fulfilled, it becomes the solemn duty of the court to dismiss such indictment. Although it is a well established maxim of law that the presumption of innocence is with all defendants, up until verdict is rendered, nevertheless it is universally recognized that an outstanding indictment constitutes a cloud on a person's reputation and very existence. . . . It would be cruel and inhuman and in clear violation of a defendant's rights to permit the indictment to stand under all circumstances herein enumerated. Adherence to the principle of law here announced transcends the issue of any particular defendant's guilt or the disposition of any particular case."

Assuredly the defendant here has been denied his right to a speedy trial. The real question presented is whether having once sought a reasonable delay in the trial, the defendant has waived his right. Concededly this is the general rule, but we submit that the court is not without dis-

cretion in its application. Here the defendant sought a reasonable delay only 7 days after the indictment was returned and a mere three days after he had pleaded to the indictment. From that time onward the defendant moved expeditously, from January 7, 1955 onward the defendant repeatedly requested for trial and vigorously protested each adjournment. But it was not until May, 1958 that the trial was commenced.

The logical basis for a rule that a defendant waives his right by having himself sought an adjournment, is that a defendant may not complain of a delay where he has been a party to its cause. However, no defendant may be considered a party to a four year delay where he had only once sought an adjournment, in order to make necessary and prompt motions to prepare his defense.

That the defendant, on one occasion, immediately after the indictment was returned consented to—or even requested—a reasonable adjournment, cannot, we submit, forever bar him from asserting such a fundamental and basic right. So to hold would be to permit the prosecution of a criminal case to lie dormant for an inordinate length of time, with all the consequent vices so forcefully condemned in the *Prosser* case, merely because the prosecution, possessed of all the facts after an indictment, had moved with unnecessary, or unseemly haste, for purely tactical reasons, to try a defendant not prepared for trial. At the most, it seems such a request by a defendant should toll the period of such adjournment and drop it out of the calculation of what is a total, unreasonable delay. As the Court of Appeals of New York has noted, each case must depend upon its own facts (*People* v. *Prosser*, *supra*, 309 N. Y. 353, at p. 360). Judge McCullen, we submit, held that under the facts of the instant case, *a delay just April 10, 1957* would be unconscionable, and that holding is the law of this case.

People v. *Winter* (Gen. Sess. N. Y. Co., 1958), 182 N. Y. S. 2d 254 (not officially reported), involved three indictments. The first indictment, involving conspiracy, was found on July 27, 1954. The arraignment was on July 29, 1954. The second indictment involving conspiracy and the third indictment, involving conspiracy, attempt to suborn perjury, inducing another to commit perjury, and attempting to induce a witness to give false testimony, were found on January 5, 1955. The arraignment on the second and third indictments was on January 6, 1955. The District Attorney notified the defendants that the indictments would be placed on the July 1, 1958 calendar for the purpose of fixing a date for trial. Thereupon the defendants made a motion to dismiss the indictments. The court dismissed the indictments, despite the District Attorney's contention that on April 4, 1956, the defendants consented that all three cases be marked off the calendar with an understanding that they would be tried at some future time.

Judge Schweitzer, of the Court of General Sessions, after considering the facts relevant to the defendant's consent to the adjournment, concluded that (p. 263):

> "Whatever might be said as regards the several postponements up to April 4, 1956, it can scarcely be maintained that the defendants may in any way be charged with responsibility for, or acquiescence in, the long delay subsequent to that date."

This is exactly the position which we asked the New York State Court of Appeals to take in the case at bar: that whatever the responsibility of the defendant for the adjournment on October 22, 1953, or even up to January 7, 1955, when the defendant began affirmatively to seek a trial, it can scarcely be maintained that the defendant may in any way be charged with responsibility for, or acquiescence in,

the long delay subsequent to that date and until the trial was actually commenced in May of 1957.

Thus, in dismissing the indictment in the *Winter* case, the Court held (pp. 259-260):

> "On the other hand, a waiver of the right to a speedy trial is not to be lightly inferred from equivocal circumstances. The wrong and the harm that may result from undue delay in the prosecution of a criminal charge are sufficiently serious (People v. Prosser . . .) to require evidence from which a waiver or acquiescence in such delay may reasonably be inferred. Absent such evidence, we may not presume acquiescence in the loss of fundamental rights (Johnston v. Zerbst, 304 U. S. 458, 464 . . . Taylor v. United States . . . 283 F. 2d 259, 261; Petition of Provoo, D. C., 17 F. R. D. 183, affirmed 350 U. S. 857 . . .)."

In *People* v. *Piscitello* (1960), 7 N. Y. 2d 387, the defendant had sought and received no less than 20 adjournments and had consented to or acquiesced in at least 8 others. The basis for such adjournments were not only for purposes of preparing for trial and the making of motions, as in the case at bar, but also for defaults in appearance by defendant and his counsel and to permit defendant's counsel to take a month's vacation in California. Despite such facts, the New York Court of Appeals reversed the conviction of a defendant, stating at pp. 388-9:

> "No one questions that a defendant is entitled to a speedy trial (Code Crim. Pro. §668; Civil Rights Law §12; U. S. Const., 6th Amdt.), or that the burden of proceeding promptly rests on the State and not on the defendant (*People* v. *Prosser*, 309 N. Y. 353). But, such right being personal, it may be waived by conduct on the part of the defendant indicating that he is not

intent on a speedy trial, for instance, requesting a postponement or an adjournment (*People* v. *Godwin*, 2 N. Y. 2d 891; affd. 2 A. D. 2d 846), or acquiescence in a delay sought by the prosecution, or failure to make a motion before or at the trial for a dismissal by reason of such delay (*People* v. *White*, 2 N. Y. 2d 220).

"The defendant in the case before us was indicted in February, 1955 and not arraigned until July, 1956. The District Attorney, with commendable fairness, rightfully acknowledged that this delay of 17 months constituted a denial of a speedy trial to which the defendant was entitled and that, if a motion had been made at the time of the arraignment, the motion would have had to be granted. However, it is argued that the right was waived by subsequent conduct on the part of the defendant and of his counsel.

"Upon this record, it may not be said that the rights accruing to this defendant by reason of the undue delay were waived. The granting of the request by defendant's counsel for a postponement to permit the making of motions for all purposes was broad enough to indicate that any rights enjoyed by the defendant then existing were being preserved and protected. When the motion to dismiss for undue delay was made, even though subsequent in point of time to motions addressed to the indictment, it should have been granted, absent any showing of good cause to the contrary by the prosecutor (Code Crim. Prec., §668). Here there was no such showing."

We submit that similarly the conviction of Von Cseh in the case at bar should have been set aside and the indictment dismissed on the ground that he was deprived of his constitutional and statutory right to a speedy trial. The inexcusable delay of almost 30 months between the time the

prosecutor renoticed the case for trial and the time of the trial, which was caused solely by the prosecutor over the vigorous protests of Von Cseh, was unconscionable and violative of his rights and required review of the conviction herein.

The right to speedy trial is fundamentally a right guaranteed by federal and state constitutions, but it is also a statutory right in those states which in addition to the constitutional guaranty define the nature and limits of the right by express statute. Therefore, waiver or loss by one accused of crime of his right to a speedy trial includes waiver or loss not only of such right as it is guaranteed generally by federal and state constitutions but also of the rights of accused under statutes attempting to define "speedy trial" by providing for the time within which accused must be brought to trial.

The Court in *People* v. *Den Uyl* (1948), 320 Mich. 477, 31 N. W. 2d 699, points out that many states have enacted statutes providing a time limitation upon delay of trial, and these statutes are held to be supplementary to the constitutional provisions for speedy trial and enacted to give them concrete form and force; the time limit generally prescribed, with conditions as to further delay, is from 60 days to 3 terms of Court.

With reference to the importance of the constitutional guaranty of speedy trial, the Court in *ex parte Altman* (1940, D. C. Cal.), 34 F. Supp. 106 (in an opinion which did not discuss waiver or loss of such right) said:

> "We can conceive the anarchy which would result if the power to terminate a criminal proceeding for want of prosecution did not exist. Defendants might have prosecutions hang over their heads, like the sword of Damocles, for years, without an effort being made to

bring them to trial. And yet, if the prosecutor should refuse to try them, and the Court acquiesce, they would be at his mercy. The constitutional guaranty of speedy trial (United States Constitution, Amendment VI) would be brought to nought, if, when the court set a cause for trial and the prosecutor was not prepared to proceed, the Court were powerless to dismiss it for failure to proceed diligently. To these considerations are traceable certain statutory provisions which make criminal trials within a certain time obligatory under penalty of discharge."

Generally speaking, a speedy trial is one conducted according to prevailing rules, regulations, and proceedings of law free from arbitrary vexatious, and oppressive delays. The right does not require a trial immediately upon return of an indictment, nor on arrest made under it, but requires that the trial shall be had as soon as reasonably possible after the indictment is found, without depriving the prosecution of a reasonable time in which to prepare for trial. *Shepherd* v. *United States* (1947, C. A. 8th Neb.), 163 F. 2d 974.

There is no dissent from the proposition that one may waive his constitutional or statutory right to a speedy trial, the right being a personal privilege and not of a jurisdictional nature, and not constituting any limitation upon the power of the state to prosecute.

UNITED STATES.—*Danziger* v. *United States* (1947, C. A. 9th Cal.), 161 F. 2d 299, cert. den. 322 U. S. 769, 92 L. ed. 354, 68 S. Ct. 81; *Sheppard* v. *United States* (1947, C. A. 8th Neb.), 163 F. 2d 974, *supra*; *Levine* v. *United States* (1950, C. A. 8th Mo.), 182 F. 2d 556, cert. den. 340 U. S. 921, 95 L. ed. 665, 71 S. Ct. 352; *Chinn* v. *United States* (1955, C. A. 4th W. Va.), 228 F. 2d 151; *Petition*

of Provoo (1955, D. C. Md.), 17 F. R. D. 183, aff'd 350 U. S. 857, 100 L. ed 761, 76 Ct. 101.

ARIZONA.—*Westover* v. *State* (1947), 66 Ariz. 145, 185 P. 2d 315.

CALIFORNIA.—*People* v. *Tahtinen* (1957), 150 Cal. App. 2d (Avd. 346), 309 P. 2d 497.

IDAHO.—*State* v. *Shaw* (1949), 69 Idaho 365, 207 P. 2d 540.

ILLINOIS.—*People* v. *Brame* (1955), 6 Ill. 2d 412, 128 N. E. 2d 911.

INDIANA.—*Randolph* v. *State* (1954), 234 Ind. 57, 122 N. E. 2d 860, cert. den. 350 U. S. 889, 100 L. ed. 783, 76 S. Ct. 145.

IOWA.—*Pines* v. *District Court* (1943), 233 Iowa 1284, 10 N. W. 2d, 574.

KANSAS.—*State* v. *Hess* (1956), 180 Kan. 472, 304 P. 2d 474.

MAINE.—*State* v. *Boynton* (1948), 143 Me. 313, 62 A. 2d 182.

MARYLAND.—*Harris* v. *State* (1950), 194 Md. 288, 71 A. 2d 36.

MISSOURI.—*Osborne* v. *Owsley* (1953, Mo. App.), 257 S. W. 2d 691.

NEW JERSEY.—*State* v. *Hulsizer* (1956), 42 N. J. Super 224, 126 A. 2d 47.

NEW YORK.—*People* v. *White* (1957), 2 N. Y. 2d 220, 159 N. Y. S. 2d 168, 140 N. E. 2d 258.

OKLAHOMA.—*Ex parte McCollum* (1949), 90 Okla. Crim. 153, 212 P. 2d 161.

PENNSYLVANIA.—*Commonwealth* v. *Smihal* (1956), 182 Pa. Super 232, 126 A. 2d 523.

TENNESSEE.—*State ex rel. Underwood* v. *Brown* (1951), 193 Tenn. 113, 244 S. W. 2d 168.

It has been stated as a general proposition of law that waiver of the right is effected by action or inaction on the part of defendant causing delay in prosecution, it being important to note in this connection that many of the statutes implementing the constitutional provisions for speedy trial expressly refuse the benefits thereof where the delay has happened on the application of defendant or has otherwise been occasioned by him.

UNITED STATES.—*Shepard* v. *United States* (1947, C. A. 8th Neb.), 163 F. 2d 974, *supra*; *United States ex rel. Hanson* v. *Ragen* (1948, C. A. 7th Ill.), 166 F. 2d 698, cert. den. 334 U. S. 849, 92 L. ed. 1772, 68 S. Ct. 1501; *United States* v. *Alagia* (1955, D. C. Del.), 17 F. R. D. 15.

ILLINOIS.—*People* v. *Morris* (1954), 3 Ill. 2d 437, 121 N. E. 2d 810.

IOWA.—*McCandless* v. *District Court* (1953), 245 Iowa 599, 61 N. W. 2d 674.

KANSAS.—*State* v. *Hess* (1956), 180 Kan. 472, 304 P. 2d 474.

MAINE.—*State* v. *Boynton* (1948), 143 Me. 343, 62 A. 2d 182.

MARYLAND.—*Harris* v. *State* (1950), 194 Md. 288, 71 A. 2d 36.

OKLAHOMA.—*Ex parte Meadows* (1941), 71 Okla. Crim. 353, 112 P. 2d 419.

PENNSYLVANIA.—*Commonwealth* v. *Smihal* (1956), 182 Pa. Super 232, 126 A. 2d 523.

It is now the well-established general rule, that if acts or omissions of accused are the cause of or a contributing factor in the delay which passes the trial over the period or term of Court within which, according to statute, the case must be brought to trial, unless good cause to the contrary be shown, accused is not entitled to a dismissal. *McCandless* v. *District Court* (1953), 245 Iowa 599, 61 N. W. 2d 674, *supra*. The Court said that such acts, or failure to act, when one is bound to do so, may give rise to an agreed postponement, or to a waiver of the constitutional and statutory provisions relating to a speedy trial.

Defendant can invoke his constitutional objection to a delay in bringing him to trial only if he has in no manner contributed to the delay himself. *United States* v. *Alagia* (1955, D. C. Del.), 17 F. R. D. 15.

Consequently, where delay in prosecution is caused by continuances requested by defendant or counsel in his behalf, it is generally regarded that a waiver of the right to insist upon the constitutional or statutory right in question has occurred. In fact, it has been held that the burden is on defendant to show that the delay in prosecution was not due to any act of his.

UNITED STATES.—*Gerardino* v. *Porto Rico* (1928, C. A. 1st Puerto Rico), 29 F. 2d 517; *D'Aquino* v. *United States* (1951, C. A. 9th Cal.), 192 F. 2d 338, reh. den. 203 F. 2d 390, cert. den. 343 U. S. 935, 96 L. ed. 1343, 72 S. Ct. 772, reh. den. 343 U. S. 958, 96 L. ed. 1358, 72 S. Ct. 1053; *Germany* v. *Huaspeth* (1954, C. A. 10th Kan.), 209 F. 2d 15, cert. den. 347 U. S. 946, 98 L. ed. 1094, 74 S. Ct. 644.

ARKANSAS.—*Breedlove* v. *State* (1955), 225 Ark. 170, 280 S. W. 2d 224.

CALIFORNIA.—*People* v. *Tahtinen* (1957), 150 Cal. App. 2d (Adv. 346), 309 P. 2d 497.

GEORGIA.—*Woodall* v. *State* (1920), 25 Ga. App. 8, 102 S. E. 913.

IDAHO.—*Ellenwood* v. *Cramer* (1954), 75 Idaho 338, 272 P. 2d 702, overruled on other grounds in *Schrom* v. *Cramer* (1954), 76 Idaho 1, 275 P. 2d 979.

ILLINOIS.—*People* v. *Brame* (1955), 6 Ill. 2d 412, 28 N. E. 2d 911.

INDIANA.—*Harbaugh* v. *State* (1955), 234 Ind. 420, 126 N. E. 2d 576.

KANSAS.—*State* v. *Lightfoot* (1925), 118 Kan. 428, 235 P. 843.

MISSOURI.—*State* v. *Woods* (1940), 346 Mo. 538, 142 S. W. 2d 87; *State* v. *Nolan* (1943, Mo.), 171 S. W. 2d 653.

NEW YORK.—*People* v. *Perry* (1949), 196 Misc. 922, 96 N. Y. S. 2d 517.

OKLAHOMA.—*Berkihiser* v. *State* (1950), 92 Okla. Crim. 31, 219 P. 2d 1020.

PENNSYLVANIA.—*Commonwealth ex rel. Sell* v. *Burke* (1953), 174 Pa. Super. 344, 101 A. 2d 174.

It has been held that defendant may lose the right to be discharged from prosecution under the constitutional and statutory provisions in question where the delay in prosecution resulted from the filing of dilatory pleas, motions, etc., such as motions for a bill of particulars, demurrers, motions for change of venue, or requests for additional time to enable depositions to be taken, or by the institution of habeas corpus proceedings, filing of an affidavit of prejudice against the presiding judge, etc.

UNITED STATES.—*Fowler* v. *Hunter* (1947, C. A. 10th Kan.), 164 F. 2d 668, cert. den. 333 U. S. 868, 92 L. ed. 1146, 68 S. Ct. 785; *Re Sawyer's Petition* (1956, C. A. 7th Wis.),

229 F. 2d 805, Affg. (D. C.) 129 F. Supp. 687, cert. den. 351 U. S. 966, 100 L. ed. 1486, 76 S. Ct. 1025, reh. den. 352 U. S. 860, 1 L. ed. 2d 70, 77 S. Ct. 24; *United States* v. *Postma* (1957, C. A. 2d N. Y.); 242 F. 2d 488.

ARIZONA.—*State* v. *Polan* (1954), 78 Ariz. 253, 278 P. 2d 432.

CALIFORNIA.—*People* v. *Gere* (1924, Cal. App.), 226 P. 934.

ILLINOIS.—*People* v. *Iasello* (1951), 410 Ill. 252, 102 N. E. 2d 138.

INDIANA.—*Weer* v. *State* (1941), 219 Ind. 217, 36 N. E. 2d 787, 37 N. E. 2d 537.

IOWA.—*Ferguson* v. *Beehly* (1938), 224 Iowa 1049, 277 N. W. 755.

KANSAS.—*State* v. *Stanley* (1956), 179 Kan. 613, 296 P. 2d 1088, cert. den. 352 U. S. 851, 1L. ed. 2d 62, 77 S. Ct. 73.

LOUISIANA.—*State* v. *Bradford* (1949), 217 La. 32, 45 So. 2d 897.

MONTANA.—*State ex rel. Borberg* v. *District Court* (1952), 125 Mont. 481, 240 P. 2d 854.

VIRGINIA.—*Howell* v. *Commonwealth* (1947), 186 Va. 894, 45 S. E. 2d 165.

WASHINGTON.—*State ex rel. James* v. *Superior Court* (1949), 32 Wash. 2d 451, 202 P. 2d 250; *State* v. *Lydon* (1952), 40 Wash. 2d 88, 241 P. 2d 202.

The fact that defendant is instrumental in procuring the absence of prosecution witnesses will preclude him from the benefit of a statute prescribing time of trial, as is shown in: *Re Morgan* (1929), 57 N. D. 763, 224 N. W. 209;

Respublica v. *Arnold* (1801), 3 Yeates (Pa.) 263; *Com. ex rel. Haggerty* v. *Superintendent of Philadelphia County Prison* (1869), 4 Brewst. (Pa.) 320.

Accused may not complain of the denial of a speedy trial where either he or his counsel consents to a continuance requested by the prosecution, such consent having been held equivalent to a postponement on his application from the benefits thereof.

UNITED STATES.—*Taylor* v. *United States* (1956), 99 App. D. C. 183, 238 F. 2d 259.

ARIZONA.—*Westover* v. *State* (1947), 66 Ariz. 145, 185 P. 2d 315.

ARKANSAS.—*Breedlove* v. *State* (1955), 225 Ark. 170, 280 S. W. 2d 224, *supra*.

CALIFORNIA.—*People* v. *Tahtinen* (1957), 150 Cal. App. 2d (Adv. 346), 309 P. 2d 497.

FLORIDA.—*State* v. *Williams* (1954, Fla.), 73 So. 2d 295.

GEORGIA.—*Woodall* v. *State* (1920), 25 Ga. App. 8, 102 S. E. 913.

IDAHO.—*Ellenwood* v. *Cramer* (1954), 75 Idaho 338, 272 P. 2d 702, overruled on other grounds in *Schrom* v. *Cramer* (1954), 76 Idaho 1, 275 P. 2d 979.

ILLINOIS.—*People* v. *Brame* (1955), 6 Ill. 2d 412, 28 N. E. 2d 911.

KANSAS.—*State* v. *Hess* (1956), 180 Kan. 472, 304 P. 2d 474.

IOWA.—*Keegan* v. *District Court* (1946), 237 Iowa 1186, 24 N. W. 2d 791.

MISSOURI.—*State* v. *Nolan* (1943, Mo.), 171 S. W. 2d 653.

NEW YORK.—*People* v. *Prosser* (1955), 309 N. Y. 353, 130 N. E. 2d 891, 57 ALR 2d 295 (apparently supporting the rule, but finding it unnecessary to rule directly on the matter); *People* v. *White* (1957), 2 N. Y. 2d 220, 159 N. Y. S. 2d 168, 140 N. E. 2d 258; *People* v. *Perry* (1949), 196 Misc. 922, 96 N. Y. S. 2d 517.

NORTH DAKOTA.—*State* v. *Braathen* (1950), 77 N. D. 309, 43 N. W. 2d 202.

OKLAHOMA.—*Ex parte O'Hara* (1949), 89 Okla. Crim. 250, 206 P. 2d 592.

PENNSYLVANIA.—*Commonwealth* v. *Smihal* (1956), 182 Pa. Super. 232, 126 A. 2d 523.

TENNESSEE.—*State ex rel. Underwood* v. *Brown* (1951), 193 Tenn. 113, 244 S. W. 2d 168.

From failure by defendant to object to a continuance requested by the prosecution, consent to such continuance will be presumed.

However, in *Taylor* v. *United States* (1956), 99 App. D. C. 183, 238 F. 2d 259, it was held that defendant could not be said to have acquiesced in the delay, where it appeared that although the offenses for which he was convicted were committed in July, 1950, the indictments were not returned until February, 1954, and that he had been sentenced in November, 1950, to serve a sentence of from 5 to 7½ years in prison in New York State, and remained there until, on petition of the Government filed in February, 1956, a writ of habeas corpus ad prosequendum was issued, and he was returned to the District of Columbia, arraigned in February, 1956, and convicted at a trial which commenced in March, 1956, and there was no show-

ing that he knew that he had been indicted until the writ of habeas corpus ad prosequendum was executed in 1956. The court said that there was to be borne in mind the admonition of the Supreme Court in *Johnson* v. *Zerbst* (1938), 304 U. S. 458, 82 L. ed. 1461, 58 S. Ct. 1019, 146 ALR 357, that courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that acquiescence in the loss of fundamental rights was not to be presumed.

The record must show an objection to the delay complained of, otherwise it will be presumed that the delay was with the consent of accused, thereby precluding him from complaining that he was not accorded a speedy trial.

It has been held generally that an accused is not entitled to a discharge for delay in bringing him to trial unless it appears that he resisted postponement, demanded a trial, or made some effort to procure a speedier trial than the state accorded him. So, it is ordinarily deemed that a defendant, in the absence of such effort, has waived his right to a speedy trial under the Constitution and the statutes in aid thereof.

UNITED STATES.—*Petition of Provoo* (1955, D. C. Md.), 17 F. R. D. 183, affd. 350 U. S. 857, 100 L. ed. 761, 76 S. Ct. 101, *supra*; *United States* v. *Stein* (1955, D. C. N. Y.), 18 F. R. D. 17.

ALABAMA.—*Ex parte State ex rel. Atty. Gen.* (1951), 255 Ala. 443, 52 So. 2d 158.

ARKANSAS.—*Ware* v. *State* (1925), 159 Ark. 540, 252 S. W. 934; *Williams* v. *State* (1946), 210 Ark. 402, 196 S. W. 2d 489.

CALIFORNIA.—*People* v. *Lind* (1924), 68 Cal. App. 575, 229 P. 990.

DELAWARE.—*State* v. *Tyre* (1907), 22 Del. (6 Penn.) 343, 67 A. 199.

FLORIDA.—*Kelly* v. *State* (1951, Fla.), 54 So. 2d 431.

ILLINOIS.—*People* v. *Sweeney* (1951), 409 Ill. 223, 99 N. E. 2d 143.

IOWA.—*McCandless* v. *District Court* (1953), 245 Iowa 599, 61 N. W. 2d 674, *supra*.

KANSAS.—*Re Garner* (1931), 134 Kan. 410, 5 P. 2d 821.

LOUISIANA.—*State* v. *Banks* (1903), 111 La. 22, 35 So. 370.

MAINE.—*State* v. *Boynton* (1948), 143 Me. 313, 62 A. 2d 182, *supra*.

MARYLAND.—*Tutt* v. *Warden, Maryland Penitentiary* (1952), 199 Md. 691, 87 A. 2d 523.

MICHIGAN.—*People* v. *Foster* (1933), 261 Mich. 247, 246 N. W. 60.

MINNESOTA.—*State* v. *McTague* (1927), 173 Minn. 153, 216 N. W. 787.

MONTANA.—*State* v. *Schnell* (1939), 107 Mont. 579, 88 P. 2d 19.

NEBRASKA.—*Maher* v. *State* (1944), 144 Neb. 463, 13 N. W. 2d 641, cert. den. 323 U. S. 737, 89 L. ed. 606, 65 S. Ct. 91.

NEVADA.—*Re Tramner* (1912), 35 Nev. 56, 126 P. 337, 41 L. R. A. N. S. 1095.

NEW JERSEY.—*State* v. *Halsey* (1956), 42 N. J. Super. 224, 126 A. 2d 47.

NORTH DAKOTA.—*State* v. *Dancer* (1924), 51 N. D. 98, 199 N. W. 196.

OHIO.—*Ex parte McGehan* (1872), 22 Ohio St. 442.

PENNSYLVANIA.—*Commonwealth* v. *Smikal* (1956), 182 Pa. Super. 232, 126 A. 2d 523.

SOUTH DAKOTA.—*State* v. *Lamphere* (1965), 26 S. D. 98, 104 N. W. 1038.

TENNESSEE.—*State ex rel. Underwood* v. *Brown* (1951), 193 Tenn. 113, 244 S. W. 2d 168.

TEXAS.—*Gass* v. *State* (1955), 161 Tex. Crim. 37, 274 S. W. 2d 697.

UTAH.—*State* v. *Bohn* (1926), 67 Utah 362, 248 P. 119.

WASHINGTON.—*State* v. *Landon* (1952), 40 Wash. 2d 88, 241 P. 2d 202.

WISCONSIN.—*State* v. *Sawyer* (1953), 263 Wis. 218, 56 N. W. 2d 811, cert. dismd. 346 U. S. 801, 98 L. ed. 333, 74 S. Ct. 66.

WYOMING.—*Casper* v. *Wagner* (1955), 74 Wyo. 115, 284 P. 2d 409.

In England, from the very earliest time, a prisoner, in theory at least, enjoyed the right to a speedy trial which was procured him by the commission of jail delivery, which issued to the justices of assize, and twice every year resulted in the jails being cleared and the prisoners confined therein being convicted and punished or freed from custody.

The right to a speedy trial is guaranteed by constitutional and statutory provisions. The right is not subject to judicial discretion. The Sixth Amendment to the Federal Constitution guarantees to accused in a criminal prosecution under the Federal Law the right to a speedy trial. While this provision does not generally apply to criminal prosecutions in the State courts under State laws, the right is generally guaranteed by State Constitutional or State statutory provisions. Any act of the legislature which in-

fringes a Constitutional provision providing for the speedy trial of a person accused is necessarily nugatory. The right to a speedy trial is absolute [Ill.—*People* v. *Schmagien*, 198 N. E. 142, 361 Ill. 371; *People* v. *Szobor*, 195 N. E. 648, 360 Ill. 233], and is not subject to the discretionary power of the Courts [*De La Mar* v. *Superior Court*, San Francisco, 71 P. 2d 96, 22 Cal. App. 2d 373; *State* v. *Artz*, 191 N. W. 605, 154 Minn. 290; *State* v. *Clark*, 168 P. 944, 86 Or. 464; *State* v. *Bond*, 271 S. W. 379, 114 Tex. 468], and is of such substantiality that no technical objection to the procedure whereby relief is sought should preclude its being enforced [*United States ex rel., Coleman* v. *Cox*, C. C. A. Miss., 47 F. 2d 988].

The constitutional guarantees of the right of a speedy trial extend to all persons accused of criminal offenses. Incarceration is not essential to its operation; an accused admitted to bail is protected as well as one in prison, as is also one who has been indicted, but not arrested, and who is not avoiding arrest.

A speedy trial is, in general, one had as soon as the prosecution, with reasonable diligence, can prepare for it; a trial according to fixed rules, free from capricious and oppressive delays, but the time within which it must be had to satisfy the guaranty depends on the circumstances.

No general principle fixes the exact time within which a trial must be had to satisfy the requirement of a speedy trial. The right to a speedy trial is necessarily relative; it is consistent with delays, and whether such a trial is afforded must be determined in the light of the circumstances of each particular case as a matter of judicial discretion. It is generally said that a speedy trial is one had as soon after indictment as the prosecution can with reasonable diligence prepare for it, regard being had to the terms of court, a trial conducted according to fixed rules, regulations

and proceedings of law, free from vexatious, capricious, and oppressive delays. One accused of crime is not entitled to a trial immediately on his arrest or accusation, he must wait until a regular term of the court having jurisdiction of the offense with which he is charged, until an indictment is found and presented if the case is one wherein the trial is on indictment, and until the prosecution has had a reasonable time to prepare for the trial. Further, his right is not infringed by continuances in the discretion of the presiding judge, unless such discretion is arbitrarily exercised. However, an unreasonable delay arising from the negligence or laches of the prosecution without fault or consent by accused violates the guarantee of a speedy trial.

The term "speedy", as employed in the constitutional provisions under consideration, being a word of indeterminate meaning, permits legislative definition to some extent; and the authorities generally hold that statutes providing for a discharge of accused unless trial is had within a stated time after indictment, information or commitment, or which require an indictment or information within a stated time, are enacted for the purpose of enforcing the constitutional right, and that they constitute a legislative construction or definition of the constitutional provision, and must be construed fairly to the accomplishment of that end.

The accused is entitled to a discharge or dismissal if his right to a speedy trial is violated and statutes providing for discharge or dismissal if the accused is not tried within a stated time are mandatory.

Constitutional guaranties of the right of accused to a speedy trial are self-executing, and if his right is violated accused is entitled to be discharged or to have the proceedings dismissed. Further, under the express provisions of the statutes in some jurisdictions, in case accused is not

tried within the period of time specified by the statutes and if according to some of such provisions he has been committed and not admitted to bail, and there has been a demand for trial, he is entitled to discharge or a dismissal of the proceedings.

Statutes which in express terms provide for a discharge or dismissal in case trial is not had within a stated time are, as a rule, construed to be mandatory, although there is some contrary authority, and unless the delay is caused by accused, or has been on good cause, accused, if he shows that he comes within the provisions of the statutes, he must be discharged. However, a statute which does not expressly provide for discharge or dismissal if not complied with has been construed as merely directory.

One, to be entitled to a speedy trial, must come within the scope of the constitutional or statutory guaranty. It is not duty of defendant to press that he be prosecuted upon indictment under penalty of waiving his right to speedy trial if he fails to do so. *U. S.* v. *Dillon*, D. C. N. Y. 1958, 183 F. Supp. 541.

Even assuming that, as general rule, a demand must be made for a speedy rule, an exception must be made in favor of one who is in fact powerless to take this action. *U. S.* v. *Chase*, D. C. Ill. 1955, 135 F. Supp. 230.

Whether delay in completing a prosecution amounts to an unconstitutional deprivation of right to speedy trial depends on circumstances, and the delay must not be purposeful or oppressive. *Pollard* v. *U. S.*, Minn. 1957, 77 S. Ct. 481, 352 U. S. 354, 1 L. Ed. 2d 393.

The right of a speedy trial is relative and is consistent with delays and dependent upon circumstances. *Stevenson* v. *U. S.*, C. A. 1960, 278 F. 2d 278, 107 U. S. App. D. C. 398.

The number of years, having elapsed since commission of offense is an important, but not conclusive, criterion in determining whether defendant has been deprived of his constitutional right to speedy trial. *Foats* v. *U. S.*, C. A. Ohio 1958, 253 F. 2d 215.

Provisions of the Sixth Amendment guaranteeing a speedy trial to anyone charged with an offense contemplates a pending charge and not the mere possibility of a criminal charge and, therefore, a defendant's right to a speedy trial could not be deemed violated on theory government did not commence its prosecution against a defendant until about three years after crimes in question were allegedly committed. *Parker* v. *U. S.*, C. A. Tenn. 1958, 252 F. 2d 680, cert. den. 78 S. Ct. 1003, 355 U. S. 964, 2 L. Ed. 2d 1071.

Where more than seven years passed between time of arrest and time of trial, including some four and one-half years between time of indictment and time of trial, but indictment was found within period of limitations, and no effort was shown to have been made by defendant to speed the trial, and no prejudice was shown to have resulted to defendant because of delay, and no motion was made by defendant at beginning of trial for dismissal because of delay, defendant on appeal could not successfully attack judgment of conviction on ground that there had been a failure to provide a speedy trial as guaranteed by this amendment. *U. S.* v. *Kao*, C. A. N. Y. 1958, 251 F. 2d 47, cert. den. 78 S. Ct. 702, 356 U. S. 949, 2 L. Ed. 2d 714.

Failure to bring defendant to trial until 1956, for housebreaking and robbery allegedly committed in 1950, was a denial of constitutional right to speedy trial and required reversal in view of weakness of evidence, though delay was caused by imprisonment of defendant in New York for another offense, in absence of showing of reasonable effort

by government to obtain defendant's return for trial. *Taylor* v. *U. S.*, C. A. 1956, 238 F. 2d 259, 99 U. S. App. D. C. 183, *supra.*

Right to a speedy trial is relative and must be determined in light of all circumstances in each case. *Day* v. *Davis*, C. A. Kan. 1956, 235 F. 2d 379, cert. den. 77 S. Ct. 104, 352 U. S. 881, 1 L. Ed. 2d 81, rehearing denied 77 S. Ct. 152, 352 U. S. 913, 1 L. Ed. 2d 120.

The constitutional guarantee of a speedy trial is a personal right, which may be waived by failure to assert it. *Campodonico* v. *U. S.*, C. A. Cal. 1955, 222 F. 2d 310, cert. den. 76 S. Ct. 65, 350 U. S. 831, 100 L. Ed. 742; *U. S.* v. *Stein*, D. C. N. Y. 1955, 18 F. R. D. 17.

The constitutional right of an accused to a speedy trial must be considered with regard to the practical administration of justice, and such right does not preclude the rights of public justice. *Kyle* v. *U. S.*, C. A. Or. 1954, 211 F. 2d 912.

One whose own action delays trial on criminal charge is precluded from invoking his right under this amendment to a speedy trial. *U. S. ex rel. Hanson* v. *Ragen*, C. C. A. Ill. 1948, 166 F. 2d 608, cert. den. 68 S. Ct. 1501, 334 U. S. 849, 92 L. Ed. 1772.

It is duty of public prosecutor, not only to prosecute those charged with crime, but also to observe constitutional mandate guaranteeing speedy trial. *U. S.* v. *Dillon*, D. C. N. Y. 1960, 183 F. Supp. 541, *supra.*

It is basic concept of our system of justice, articulated and made secure by this amendment, that a fair and impartial trial is impossible after a long lapse of time *U. S.* v. *Chase*, D. C. Ill. 1955, 135 F. Supp. 230.

The right to a speedy trial guaranteed by this amendment is not an unqualified privilege to demand immediate trial in all cases, but the defendant under his demand is

entitled to speedy settlement of the charges made against him under the circumstances. *U. S.* v. *Pack*, D. C. Del. 1957, 20 F. R. D. 209, appeal dismissed, 247 F. 2d 168.

Accused's contention that she had not been given her constitutional right entitling her to immediate discharge because of failure on part of state to accord her a speedy trial, which was raised at trial, but which was not raised on appeal, would not be considered on an appeal. *Scott* v. *State*, 1955, 113 A. 2d 880, 10 Terry 251, cause remanded on reargument, 117 A. 2d 831, 10 Terry 401.

The "speedy trial" guaranteed under this amendment and McKinney's N. Y. Code Cr. Proc. §8 is intended to protect the accused if held in jail to await trial against prolonged imprisonment, and to relieve him of anxiety and public suspicion attended upon an untried accusation of crime. *People* v. *Kraemer* (1958), 177 N. Y. S. 2d 425, 14 Misc. 2d 42.

Granting a request by defendant's counsel for postponement to permit making of motion for all purposes was broad enough to indicate that any rights enjoyed by defendant then existing were being preserved and protected, and since there was no showing to contrary, motion to dismiss for undue seventeen month delay between indictment and arraignment should have been granted even though it was made subsequent in point of time to motion addressed to indictment. *People* v. *Piscitello* (1960), 165 N. E. 2d 849, 7 N. Y. 2d 387, 198 N. Y. S. 2d 273.

A "speedy trial" is one according to fixed rules, free from capricious and oppressive delays held as soon as prosecution, with reasonable diligence, can prepare for trial, the time within which it must be held to satisfy guaranties of Const. Ind. art. 1, § 12 and the Sixth Amendment depending on the circumstances. *State* v. *Beckwith*, 1944, 57 N. E. 2d 193, 222 Ind. 618.

The right to a speedy trial is necessarily relative, due allowance being made for delays which are a natural incident to every criminal prosecution and are regarded as reasonable. *Id.*

Persons accused of crime are entitled not only to a trial by an impartial jury, but to a speedy trial. *Harris* v. *State*, 1951, 65 S. E. 2d 367, 84 Ga. App. 1.

Constitutional guaranty of speedy trial in criminal cases is not inflexibly mandatory and does not apply rigidly to every instance of delay in a criminal case but only to vexatious, capricious and oppressive delays, manufactured by the ministers of justice. *Leggett* v. *Kirby*, Ark. 1960, 331 S. W. 2d 267, cert. den., 80 S. Ct. 1073, 362 U. S. 981, 4 L. Ed. 2d 1018.

The right to a speedy trial is of long standing and has been jealously guarded over the centuries. Magna Carta states:

> "To no one will we sell, to no one deny or delay, right or justice."

This provision was implemented by special writs or jail delivery, and later by commissions of general jail delivery, under which special judges cleared the jails twice a year. In 1679 Parliament passed the Habeas Corpus Act, 31 Car. II, ch. 2, which required that prisoners indicted for treason or felony be tried at the next sessions or released on bail, "unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions, or General Gaol Delivery; (2) and if any Person or Persons committed as aforesaid upon his Prayer or Petition in open Court the first Week of the Term or first Day of the Sessions * * *, to be brought to his Trial, shall not be indicted and tried the second Term, Sessions * * * or General Gaol-delivery, after his

commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment." That Act, which Blackstone called "the Bulwark of the British Constitution", was still cherished by the British people at the time our Constitution was adopted, and by American patriots and lawyers, nurtured on Blackstone. Some thought the right to speedy trial and similar rights were so clearly a part of our "liberty" that no Bill of Rights was necessary. But the American people wanted to be sure, and gave the right of speedy trial first place in the Sixth Amendment:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Congress did not pass any statute defining the term "speedy trial", and research discloses no early federal case construing it. But most of the states which ratified the first ten amendments included a provision for speedy trial in their constitutions, and either adopted the British Habeas Corpus Act itself, or passed a similar act. These acts and the decisions of state courts during the next generation throw some light on what the men who adopted and ratified the Sixth Amendment meant by the term "speedy trial".

In *Frankel* v. *Woodrough*, 8 Cir. 1925, 7 F. 2d 796, 798, the following dictum appears:

> "The Constitutions of most of the states have provisions similar to the Sixth Amendment and many of

> the states have statutory definitions of the time or number of court terms within which criminal accusations must be tried. Such statutes provide usually for the discharge of the accused unless the trial is within the limits so defined. The United States has no such statutory provisions and we think an accused would not be entitled to a discharge even though he were denied a speedy trial within the meaning of the Constitution. His right and only remedy would be to apply to the proper appellate court for a writ of mandamus to compel trial."

This dictum has been repeated in a number of later cases, although in the great majority of federal cases before and after *Frankel* v. *Woodrough* the court recognized expressly or impliedly that if a defendant does not waive his rights by failing to ask for a speedy trial, he may, in a proper case, be entitled to a discharge because of unreasonable delay in bringing his case to trial. Even in the later Eighth Circuit cases the court recognized the right to release in a proper case.

In *Ex parte Altman*, D. C. S. D. Cal. 1940, 34 F. Supp. 106, 108, *supra*, Judge Yankwich said:

> "* * * it is not questioned that the Court, in the exercise of its jurisdiction, has the inherent power to order a dismissal for failure to prosecute. * * *
>
> We can conceive the anarchy which would result if the power to terminate a criminal proceeding for want of prosecution did not exist. Defendants might have prosecutions hang over their heads, like the sword of Damocles, for years, without an effort being made to bring them to trial. And yet, if the prosecutor should refuse to try them, and the court acquiesce, they would be at his mercy. The constitutional guaranty of speedy trial (United States Constitution, Amendment VI)

> would be brought to nought, if, when the court set a case for trial and the prosecutor was not prepared to proceed, the Court were powerless to dismiss it for failure to proceed diligently."

The dictum in *Frankel* v. *Woodrough* was based upon the fact that there was no statutory provision directing a discharge. In 1944, the Supreme Court adopted the Federal Rules of Criminal Procedure. Rule 48 deals with "Dismissal"; subdivision (b) of that rule is as follows:

> "(b) By Court. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint."

The federal courts and the state courts of Alabama hold that it is incumbent upon a defendant to demand a speedy trial, and a majority of the other state courts are in accord with this view. Since the constitutional provisions on this point in all the states are substantially the same, the different views arise from the courts' interpretations of the various constitutional provisions and the statutes which are supplementary to these provisions.

What constitutes an unreasonable delay in a trial is a matter in the court's discretion, depending on the circumstances of the individual case. Of course, the trial must not be "too speedy," in that the accused does not have sufficient time to prepare for his defense. It seems that there must be a "happy medium" reached before the trial is considered sufficient for all parties concerned. Although the matter as to what constitutes a speedy trial is within the court's discretion or subject to statute, the right to a "speedy trial" is

absolute and not within the court's discretion. *People* v. *Szobor*, 360 Ill. 233, 195 N. E. 648 (1935).

The federal courts also follow the majority rule of *Lee* v. *Grayson*, 99 So. 2d 555 (Fla. 1957).

A convincing minority follows the view that the burden of seeing that the accused has a speedy trial rests upon the state, which has vast legal machinery, rather than upon the accused who is obviously more limited. The minority view finds precedent in early English common law. In England, twice each year all prisoners who had not been tried were tried, and were sentenced or released. 22 C. J. S., Criminal Law, §466 (1940). All of this was apparently done without the accused having to "beg" for his trial. This seems to indicate that the burden of seeing that a speedy trial takes place was upon the government and not the accused.

An Arizona decision, in accord with the minority view, held that it was immaterial that the accused was out on bail pending the trial; the accused was entitled to a speedy trial in jail or out. *State* v. *Carrillo*, 41 Ariz. 170, 16 P. 2d 965 (1932). The Arizona Court, in its interpretation of that state Constitution, sums up the minority rule as follows:

> "As we read the law, defendant is not required to request the trial. He is not the moving party. It is the state that initiates the accusation, and any delay in its prosecution, except for most cogent reasons, is not contemplated or justifiable. If the state can excuse itself for not bringing the accused to trial because he did not request the trial, then the onus for celerity is shifted to the accused. There is no intimation in the law that the accused must request a trial before he may claim the right to be dismissed for failure on the part of the state to bring on the prosecution within the limit fixed by law. If the trial is postponed for any reason other than some cause attributable to the accused, in

> the absence of a showing of good cause for the postponement, it must be dismissed."

The guarantee of a speedy trial—embodied in the United States Constitution and in the constitutions of many states, is found in 8 of the New York Code of Criminal Procedure. In so many words, that section announces that:

> "In a criminal action the defendant is entitled . . . to a speedy and public trial."

Section 668 of that Code, providing the means by which the defendant may enforce his right, declares:

> "If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found the court may, on application of the defendant, order the indictment to be dismissed, unless good cause to the contrary be shown."

The speedy trial guarantee, preventing undue delay between the time of indictment and trial, serves a three-fold purpose. It protects the accused, if held in jail to await trial, against prolonged imprisonment; it relieves him of the anxiety and public suspicion attendant upon an untried accusation of crime; and, finally, like statutes of limitation, it prevents him from being "exposed to the hazard of a trial, after so great a lapse of time" that "the means of proving his innocence may not be within his reach", as, for instance, by the loss of witnesses or the dulling of memory. Report of Commissioners on Practice and Pleading (1849), p. 342, quoted in McKinney's Consol. Laws of New York, Book 66, Pt. 2, Code Crim. Proc. (1945 Ed.), p. 553.

Its benefits may be claimed, therefore, by any person under indictment, whether he be imprisoned to await trial on the pending charge, whether he be admitted to bail or whether he be a prisoner already serving a sentence in the same jurisdiction for a different crime. See e.g., *People v. Corrado*, 150 Misc. 787, 789-790, 270 N. Y. S. 235, 237, 239; *Frankel* v. *Woodrough*, 8 Cir., 7 F. 2d 796, 798-799; *Fulton* v. *State*, 178 Ark. 841, 843-845, 12 S. W. 2d 777; *Harris* v. *State*, 194 Md. 288, 296, 71 A. 2d 36; *State* v. *Smith*, 10 N. J. 84, 93, 89 A. 2d 404; *Arrowsmith* v. *State*, 131 Tenn. 480, 175 S. W. 545, L. R. A. 1915E, 363; *Ex parte Chalfant*, 81 W. Va. 93, 93 S. E. 1032; *State* v. *Keefe*, 17 Wyo. 227, 257-259, 98 P. 122, 22 L. R. A., N. S. 896.

Although a number of jurisdictions have implementing provisions similar to §668 of the New York Code of Criminal Procedure, the results reached by their courts have not been uniform. In some states, it has been said that, if the defendant does not affirmatively and promptly make known his desire for a speedy trial, he may not be heard to complain. See, e.g., *Pietch* v. *U. S.*, 10 Cir., 110 F. 2d 817, 819, 129 A. L. R. 563. In other states, the courts have taken a different view: the burden of proceeding promptly is on the state, not on the defendant. See, e.g., *State* v. *Carrillo*, 41 Ariz. 170, *supra; State* v. *Chadwick*, 150 Or. 645, 650; *Flanary* v. *Commonwealth*, 184 Va. 204, 35 S. E. 2d 135; *Ex parte Chalfant*, *supra*.

In short, then, since there was an untoward delay of four years, without a waiver by petitioner of his section 8 right to a speedy trial, and since the prosecution failed to show the slightest "good cause" for that delay, the trial judge should have granted defendant's motion and dismissed the indictment.

As Judge Fuld stated in *State* v. *Prosser*, 309 N. Y. 353, 130 N. E. 2d 891, 57 A. L. R. 2d 295:

"It may well be that adherence to the rule here announced will on occasion result in the discharge of one guilty of crime, but, as to that, we need but say, * * * that our decision 'transcends the issues of * * * [a particular defendant's] guilt or the disposition of [a] particular case'".

In *People* v. *Wilson* (Law Report News, December 12, 1968, page 2 otherwise unreported), the New York State Court of Appeals in reversing a judgment (30 A. D. 2d 297, 298 N. Y. S. 2d 792), and dismissing an indictment held, as follows:

"* * * The Presiding Justice wrote that it was unnecessary to decide 'whether the right to a speedy trial is such a fundamental principle of liberty and justice as to come within the due process clause' of the Fourteenth Amendment of the Federal Constitution. * * * He agreed that unreasonable delay in criminal prosecutions should not be tolerated. But, referring to the question as a new one in the New York courts, he concluded that the Legislature by a series of statutes had produced a complete system whereby a pending criminal prosecution may be dismissed for delay. * * * The Appellate Division's decision was that the subsequent prosecution of appellant had been authorized by these statutes and that the statutes so read are not unconstitutional.

"It is true, as the Appellate Division stated, that our statutes on their face permit the result arrived at here and that in other States statutes similar to our section 673 have been held not to be denials of speedy trial rights. But each establishes its own standards of due process. New York State's official formulation of the right of a defendant to a prompt trial is expressed in the statutes listed in the Appellate Division

opinion but this group of statutes must not be so read as to defeat the fundamental right of an accused citizen to be brought to trial and to be given a fair opportunity to show his innocence. I think these statutes must be so applied as to carry out the spirit and purpose expressed in *People* v. *Prosser* (309 N. Y. 353, *supra*). They have not been so applied here."

"Section 8 of our Code of Criminal Procedure and section 12 of the Civil Rights Law list a 'speedy and public trial' as one of the rights of a defendant in a criminal trial. This affirmation, as our *Prosser* opinion (*supra*) points out, is no less a guarantee because not written into our State Constitution. The method of enforcement of the right is described in section 668 of the Code of Criminal Procedure under which this defendant won his dismissal; and which directs a dismissal on defendant's motion if the defendant 'be not brought to trial at the next term of the court in which the indictment is triable' and no good cause is shown for the delay. * * * Everyone now agrees that the right to a prompt trial is a fundamental one. The State of New York does not present a fundamental right with one hand, and take it away with the other. As Judge Fuld wrote in *People* v. *Prosser* (309 N. Y. 353, 356, *supra*): 'The speedy trial guarantee, preventing undue delay between the time of indictment and trial, serves a threefold purpose. It protects the accused, if held in jail to await trial, against prolonged imprisonment; it relieves him of the anxiety and public suspicion attendant upon an untried accusation of crime; and, finally, like statutes of limitation, it prevents him from being "exposed to the hazard of a trial, after so great a lapse of time" that "the means of proving his innocence may not be within his reach"—as, for instance by the loss of witnesses or the dulling of memory.' * * *

> "As in the *Prosser* case, we realize that 'adherence to the rule' may 'on occasion result in the discharge of one guilty of crime' but we point out again that the result of those decisions 'is merely to impose upon the officers, charged with enforcing the law and who secured the indictment, the quite reasonable, far from burdensome, duty of noticing it for trial' (*Prosser* opinion, 309 N. Y., at p. 351, *supra*)."

Since the foregoing decisions of the several states are in conflict with one another, it is incumbent upon this Court to resolve this conflict to create a consistent rule or yardstick. The case at bar is deemed so important and epitomizes the myriad problems which beset the field of "speedy trial" deprivations. This Court has never precisely set forth the basis upon which the federal tribunals predicate their interpretation of the constitutional and statutory right to a speedy trial. In the absence of a Congressional enactment, an unequivocal explanation by this Court to clarify and justify this apparent conflict would be salutary; therefore, this Court should assume jurisdiction and grant the writ of certiorari.

Certiorari is sought on the grounds that the New York Court of Appeals has rendered a decision on an important question of State and Federal Law in conflict with applicable decisions and controlling case law; has decided an important question of State and Federal law which should be clarified and made more definite and certain by this Court; has decided a Federal question of substance not theretofore determined by this Court; has decided said question in a way probably not in accord with the applicable decisions of this Court and with other States and Circuits; and/or because of the importance of the question for the administration of criminal justice in the State and Federal Courts.

CONCLUSION

THE PETITION FOR CERTIORARI SHOULD BE GRANTED FOR THE REASONS RELIED ON HEREINBEFORE.

Respectfully submitted,

FRANCES KAHN
Member of the Bar
of the Supreme Court
of the United States
Attorney for Petitioner
401 Broadway
New York 13, New York

APPENDIX A

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Thirteenth day of October A. D. 1960.

Present:

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent-Appellant,

—v.—

LOUIS VON CSEH,
Appellant-Respondent.

A motion to amend the remittitur in the above cause having been heretofore made upon the part of the defendant herein and papers having been submitted thereon and due deliberation having been thereupon had:

ORDERED, that the said motion be and the same hereby is granted. Return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

"Upon the appeal herein there was presented and necessarily passed upon an alleged question under the Constitution of the United States, viz: Defendant contended that the right to a speedy trial as guaranteed

by the Constitution of the United States was denied to him. The Court of Appeals held that there was no such denial and that there was no substance or merit to defendant's contentions."

AND the Court of General Sessions, County of New York, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

GEARON KIMBALL
Deputy Clerk

Order on Remittitur

At a Term of the Court of General Sessions of the County of New York, held at the Criminal Courts Building, in the City of New York, Borough of Manhattan, on the 17th day of August, 1960.

Present:

HONORABLE IRWIN D. DAVIDSON,
Judge of the Court of General Sessions.

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant-Respondent

—against—

LOUIS VOX CSEH,

Defendant-Respondent-Appellant

WHEREAS, heretofore, to wit: at a term of the Court of General Sessions of the County of New York, held at the Criminal Courts Building, in the Borough of Manhattan, of said City, on the 27th day of June, 1957, the above-named defendant-respondent-appellant was in due form of law convicted by the verdict of a jury of certain felonies, to wit: 25 counts of grand larceny in the first degree and 4 counts of forgery in the second degree whereupon, to wit, on the 18th day of November then next ensuing, it was considered by the said Court and ordered and adjudged, that said defendant-respondent-appellant, for the felonies aforesaid whereof he was convicted as aforesaid, be imprisoned

in the State Prison at hard labor for the term of not less than two years nor more than four years upon each of twenty-four counts of grand larceny in the first degree, said sentences to be served concurrently; sentence upon his conviction on one count of the crime of grand larceny in the first degree was suspended; and, upon his conviction on the remaining four counts of forgery in the second degree he was sentenced to imprisonment for not less than two nor more than four years, said sentences to be served concurrently with each other and with the sentences imposed upon his conviction upon each of the twenty-four counts of grand larceny in the first degree;

And whereas, the defendant-respondent-appellant aforesaid thereafter duly appealed from the said judgment to the Appellate Division of the Supreme Court of the State of New York for the First Department;

And whereas, at a Term of the Appellate Division of the Supreme Court, held in and for the First Department, to wit; at the Court House thereof in the County of New York, on the 16th day of December, 1959, said judgment of this Court was by the judgment of said Appellate Division modified by reversing, on the law, the convictions on all larceny counts (counts 1 through 25) and, in the exercise of discretion, such counts being dismissed and the suspended or concurrent sentences imposed thereunder vacated, and as so modified the judgment of conviction was unanimously affirmed on the law and the facts;

And whereas, the defendant-respondent-appellant and the appellant-respondent aforesaid thereafter duly appealed from the judgment of said Appellate Division to the Court of Appeals of the State of New York;

AND WHEREAS, at a term of said Court of Appeals, held at the Capitol in the City of Albany, on the 8th day of July, 1960, the said judgment of said Appellate Division was by the judgment of said Court of Appeals in all things affirmed, and the record herein and the proceedings in the said last-mentioned Court upon the said appeal, were by the said judgment remitted to this Court, there to be proceeded upon according to law, as by the remittitur of said Court of Appeals now on file in this Court, more fully appears;

AND WHEREAS, the defendant-respondent-appellant Louis Von Cseh has been at liberty under bond upon a Certificate of Reasonable Doubt pending the disposition of the appeal aforesaid, and the District Attorney having moved on the bail bond that the said defendant-respondent-appellant Louis Von Cseh be surrendered in execution of the said judgment and the defendant-respondent-appellant Louis Von Cseh having surrendered himself for the execution of the said judgment;

NOW, THEREFORE, on reading and filing the said remittitur, and on motion of Frank S. Hogan, District Attorney, it is

ORDERED, that said judgment of said Court of Appeals be and the same hereby is made the judgment of this Court, and it is further

ORDERED, that said judgment of this Court so appealed from as aforesaid and so modified, and said judgment of the Appellate Division of the Supreme Court herein, be and the same are hereby directed to be enforced and carried into execution and effect, and it is further

ORDERED that the Commissioner of Correction of the City of New York receive the said defendant-respondent-appellant Louis Von Cseh and deliver him to the Warden of the State Prison and the said Warden is hereby ordered to receive the said Louis Von Cseh from the Commissioner of Correction and keep and detain the said Louis Von Cseh in the said State Prison upon a commitment and sentence of June 27, 1957, imposed by the Honorable Irwin D. Davidson, a Judge of the Court of General Sessions of the County of New York, as modified as hereinbefore set forth, to wit, four (4) terms of imprisonment in State Prison each for a period of not less than two (2) years nor more than four (4) years under counts 26, 28, 29 and 31 (forgery counts), each of said terms to be served concurrently with each other.

Enter,

IRWIN D. DAVIDSON
Judge of the Court of General Sessions

October 13, 1960

And thereafter a motion to amend the remittitur having been granted this remittitur is hereby amended by adding thereto the following:

"Upon the appeal herein there was presented and necessarily passed upon an alleged question under the Constitution of the United States, viz: Defendant contended that the right to a speedy trial as guaranteed by the Constitution of the United States was denied to him. The Court of Appeals held that there was no such denial and that there was no substance or merit to defendant's contentions."

And it was also further ordered that the record aforesaid and the proceedings in this Court, be remitted to the Court of General Sessions of the County of New York, there to be proceeded upon according to law.

Therefore, it is considered that the said order and judgment be affirmed &c as aforesaid.

And thereupon, as well the notices of appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Court of General Sessions of the County of New York, before the Judges thereof, according to the form and of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Court of General Sessions, before the Judges thereof, &c.

Raymond J. Cannon
Clerk of the Court of Appeals
of the State of New York

[Certified by Clerk of Court of Appeals]

APPENDIX B

STATE OF NEW YORK
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Thirteenth day of October A. D. 1960.

Present:

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

Mo. No. 532

THE PEOPLE &c.,

Respondent-Appellant,

vs.

LOUIS VON CSEH,

Appellant-Respondent.

A motion for a reargument of the above cause and for other specified relief having been heretofore made upon the part of the defendant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

GEARON KIMBALL
Deputy Clerk

[SEAL]

APPENDIX C

SUPREME COURT

APPELLATE DIVISION—FIRST DEPARTMENT

Oct. 20, 1959.

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v.

LOUIS VON CSEH,

Defendant-Appellant.

---

191 N. Y. S. 2d 699, 9 A. D. 2d 660.
See also 9 Misc. 2d 718, 170 N. Y. S. 2d 699.

Before BOTEIN, P.J., and BREITEL, RABIN, FRANK and MCNALLY, JJ.

PER CURIAM.

Judgment of conviction modified by reversing, on the law, all larceny counts (counts 1 through 25) and, in the exercise of discretion, such counts are dismissed and the suspended or concurrent sentences imposed thereunder eliminated, and as so modified the judgment of conviction is unanimously affirmed on the law and the facts. The larceny convictions may not stand because defendant made use of false representations (i.e., the "padded" invoices) "in the course of accomplishing, or in aid of, or in facilitating" the theft within the meaning of Section 1290-a of the Penal Law. Even if the false pretenses were used in connection with a scheme which aborted prior to the

commission of the larcenies alleged, the only material deviations from such scheme was defendant's unilateral ouster of his colleagues. Thus, the false representations constituted an integral part of the embezzlement eventually committed and were adopted by defendant in order to accomplish the crime charged. See *People* v. *Lobel*, 298 N. Y. 243, 82 N. E. 2d 145, esp. diss. op. by Fuld, J., and Penal Law, §1290-a, as amended by L. 1950, c. 149. Since the larceny counts contained no allegations of any false representations, proof of them was inadmissible to sustain the larceny counts. In view of the foregoing, no determination need be made whether defendant's other contentions with respect to such larceny counts have merit and were preserved by exceptions to the charge. It is noted, however, on this record and its limited proof, that in view of the broad authority given by Man Radio to defendant and his colleagues under the agreement between Man Radio and Man Investors (e.g., the right to deposit Man Radio's funds in such manner as they saw fit), an objective manifestation of dominion inconsistent with Man Radio's authorization was required before the funds could be deemed stolen. Neither the secret accumulation of Man Radio's funds at Indus nor their subsequent transfer to defendant's personal account necessarily constituted such inconsistent dominion. Hence, the evidence supports the jury's finding that defendant committed the larcenies, as alleged, when he took down the funds from his personal account and used them himself. Similarly, therefore, there was no error in the court's refusal to grant defendant's third request. With respect to the forgery counts (i.e., counts 26, 28, 29 and 31), the evidence amply supported the jury's finding of guilt; Section 1290-a was inapplicable and therefore did not inhibit the admission of proof of the "padded" invoices; and, contrary to defendant's request to charge, Mathur was not an accomplice as a matter of

law in these later crimes committed by defendant individually. In view of the affirmance of the forgery convictions and the concurrent sentences imposed, the larceny counts may be dismissed, in the exercise of discretion, since no useful purpose would be served by a new trial thereon (Code Cr. Proc. §543; *People* v. *Daghita*, 301 N. Y. 223, 228, 93 N. E. 2d 649, 651. See *People ex rel. Maurer* v. *Jackson*, 2 N. Y. 2d 259, 269, 159 N. Y. S. 2d 203, 210; cf. *People* v. *Torres*, 5 A. D. 2d 134, 170 N. Y. S. 2d 104).

Settle order.

FILE COPY

Office-Supreme Court, U.S.
FILED
FEB 7 1961
JAMES R. BROWNING, Clerk

Supreme Court of the United States

October Term, 1960

No. 636

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

against

LOUIS VON CSEH,

Defendant-Petitioner.

RESPONDENT'S BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

FRANK S. HOGAN
District Attorney
New York County

RICHARD G. DENZER
H. RICHARD UVILLER
Assistant District Attorneys
Of Counsel

155 Leonard Street
New York, New York.

INDEX

	PAGE
STATEMENT	1
PERTINENT NEW YORK STATUTES	3
Code of Criminal Procedure, Section 8	3
Code of Criminal Procedure, Section 668	3
Civil Rights Law, Article 2, Section 12	3
INTRODUCTION	4
CHRONOLOGY OF EVENTS DURING TIME ELAPSED BETWEEN INDICTMENT AND COMMENCEMENT OF TRIAL	5
QUESTION PRESENTED	8
POINT I—There was no denial of due process of law in the speed with which the defendant-petitioner was brought to trial	9
CONCLUSION	14
APPENDIX A—Order Amending Remittitur	15
APPENDIX B—Affidavit of Harris B. Steinberg, Read in Support of Motion to Dismiss Indictment	17
APPENDIX C—Opinion of Edward J. McCullen, J. Denying Motion to Dismiss Indictment	21

Supreme Court of the United States

October Term, 1960

No.

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

against

LOUIS VON CSEH,

Defendant-Petitioner.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Statement

This is a petition for a writ of certiorari to the New York State Court of Appeals to review an order of that Court, entered July 8, 1960 [8 N. Y. (2d) 993], unanimously affirming, without opinion, an order of the Appellate Division of the Supreme Court, First Department, entered December 16, 1959 [9 App. Div. (2d) 660], which modified and affirmed a judgment of the Court of General Sessions, New York County, convicting the defendant-petitioner on August 20, 1957, after trial, of GRAND LARCENY and FORGERY

Supreme Court of the United States

October Term, 1960

No.

PEOPLE OF THE STATE OF NEW YORK,

Respondent,

against

LOUIS VON CSEH,

Defendant-Petitioner.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Statement

This is a petition for a writ of certiorari to the New York State Court of Appeals to review an order of that Court, entered July 8, 1960 [8 N. Y. (2d) 993], unanimously affirming, without opinion, an order of the Appellate Division of the Supreme Court, First Department, entered December 16, 1959 [9 App. Div. (2d) 660], which modified and affirmed a judgment of the Court of General Sessions, New York County, convicting the defendant-petitioner on August 20, 1957, after trial, of GRAND LARCENY and FORGERY

and sentencing him to a number of concurrent terms of imprisonment of from two to four years each.

Although the defendant-petitioner was originally convicted of twenty-five counts of grand larceny in the first degree (N. Y. Penal Law, 1294) and four counts of forgery in the second degree [N. Y. Penal Law, 887], the judgment was modified by the Appellate Division, and affirmed by the Court of Appeals, to reverse and dismiss all counts of larceny and affirm the judgment upon the remaining counts of forgery. The basis of such modification was solely the technical failure in the pleadings to allege, pursuant to the requirements of Section 1280-a of the New York Penal Law, that the larcenies involved the use of false or fraudulent representations and pretenses [see opinion 9 App. Div. (2d) 660]. Inasmuch as the sentences imposed on these counts were to run concurrently with sentences imposed on the forgery counts, judgment was affirmed on the forgery convictions.

The remittitur was filed in the Court of General Sessions on August 17, 1960, and the defendant-petitioner therewith commenced the service of the sentence upon which he is presently confined. A motion by the defendant-petitioner for reargument was denied by the Court of Appeals on October 13, 1960. On the same date, the remittitur was amended by the Court of Appeals to show that "there was presented and necessarily passed upon" an "alleged question under the Constitution of the United States", to wit: was the defendant-petitioner denied his constitutional right to a speedy trial. "The Court of Appeals held that there was no such denial and that there was no substance of merit to defendant's contentions" [see Appendix A, pp. 15-16, *infra*].

A motion made to this Court on November 10, 1960, for admission to bail pending a decision on the instant petition (not then filed) was denied without prejudice on November 19, 1960, by Mr. Justice Harlan.

Pertinent New York Statutes

Code of Criminal Procedure, Section 8:

Rights of defendant in a criminal action.

In a criminal action the defendant is entitled

1. To a speedy and public trial

* * *

Code of Criminal Procedure, Section 668:

When a person indicted is not brought to trial at the next term thereafter.

If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found the court may, on application of the defendant, order the indictment to be dismissed, unless good cause to the contrary be shown.

Civil Rights Law, Article 2, Section 12:

Rights of persons accused of crime

In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor. An alien is not entitled to a jury, composed in part of aliens or strangers, in an action or special proceeding civil or criminal.

Introduction

The instant petition seeks to raise for review the sole federal question of whether the time which lapsed between the filing of the indictment and the commencement of trial thereon amounted to a deprivation of the defendant-petitioner's constitutional right to due process of law under the Fourteenth Amendment of the United States Constitution.

For present purposes, an extended or detailed review of the evidence adduced on trial, which proved beyond a reasonable doubt the defendant-petitioner's guilt of the crimes of grand larceny and forgery, is unwarranted. The only pertinency of such an evidentiary recapitulation, or an analysis thereof, would be to demonstrate that the issues below involved complex commercial transactions, necessitating the presence of certain foreign witnesses, and the trial could have been reasonably expected to be a rather lengthy one. In this connection, suffice it to say that the evidence established that the defendant-petitioner, an officer and agent of an Indian corporation, swindled his principal out of nearly a quarter of a million dollars by embezzling monies accumulated as a surplus fund by an independent domestic corporation which was acting as purchasing agent for the Indian principal. The foreign corporate principal had contracted with the Indian states of Jaipur and East Punjab for the installation of hydroelectric facilities and, through the agency of the defendant-petitioner, selected an apparently responsible local firm to act as purchasing agent in the United States. Letters of credit in favor of the purchasing corporation were opened by the Indian corporation with a New York bank totalling nearly one and a quarter million dollars. On instructions from the Indian principal and with the connivance of various suppliers, the purchasing agent presented for payment artificially inflated invoices which were

paid at their face amounts by the bank. The difference between those amounts and the actual cost of the equipment purchased was accumulated by the purchasing agent to the credit of their principal. By arrangement, these funds were released to the defendant-petitioner in his capacity as agent, were deposited by him in his personal account, and were subsequently withdrawn and converted to his own use. Having thus converted funds of his principal, the defendant-petitioner sought to conceal his larceny by crudely forging and uttering a paper purporting to show that he had transferred $185,250 to a courier who was subsequently killed in a plane crash.

Chronology of Events During Time Elapsed Between Indictment and Commencement of Trial

Much of the following data was not part of the record originally before the New York Court of Appeals. It is drawn, however, from the records of the Court of General Sessions and the District Attorney's Office, consisting of daily calendars, regular docket entries, and stenographic transcripts. The latter are reproduced herein in the appendix. These records are deemed relevant and are therefore included for the guidance of the Court.

The indictment against the defendant-petitioner was filed on October 15, 1953. On October 19, 1953, the defendant-petitioner was arraigned thereon and entered a plea of not guilty. The case next appeared on the trial calendar in Part 5 of the Court of General Sessions on October 22, 1953. The daily calendar kept by the clerk indicates that the case was marked "ready and passed" and adjourned to the following day. On October 23, 1953 in Part 5, the People announced they were ready for trial. After apprising the court of the complex nature of the case and their busy schedule, defense counsel stated that they did

not see how "anything could be done" on the case until "after the first of the year" (minutes, Appendix D, pp. 30-46; see p. 55, *infra*). It was agreed to adjourn the case until November 13, 1953, although counsel for the defendant-petitioner made it clear that he would not be ready to proceed to trial on that day (*Ibid.*).

On November 9, 10, and 12, 1953, the People's principal witness was examined conditionally in order to perpetuate his testimony in anticipation of his impending return to India. On November 13, 1953, in Part 5, this fact was reported to the court and the matter was adjourned to November 30, 1953, without objection by the defendant-petitioner (see minutes, Appendix D, pp. 47-48, *infra*). On November 17, 1953, the conditional examination of the witness was discontinued and voided on motion of the District Attorney and by consent of the defendant-petitioner.

On November 18, 1953, a motion by the defendant-petitioner for a bill of particulars was granted.

On November 30, the case once more appeared on the Part 5 calendar. The District Attorney informed the court that two of the People's witnesses had returned to India "in view of the fact that an early trial was out of the question" [see minutes, Appendix D, pp. 49-50, *infra*]. The People requested that the case be marked off the calendar and counsel for the defendant-petitioner stated on the record that he had no objection (*Ibid.*).

On April 20, 1954, the defendant-petitioner filed another motion addressed to the indictment, *viz.*: a motion to inspect the Grand Jury minutes for alleged insufficiency of evidence to support the indictment. That motion was denied on May 4, 1954.

The case next appeared on the calendar in Part 9, General Sessions, on January 7, 1955, and was adjourned

until April 18, 1955. The stenographer's minutes do not show any statement concerning the purpose of this adjournment, who requested it, or any objection by the defendant-petitioner. On April 18, 1955, the case was marked off the calendar without protest, no appearance having been made by the defendant-petitioner (see minutes, Appendix D, p. 51, *infra*).

The matter next appeared on the Part 2 calendar on September 13, 1955, for the purpose of fixing a date for trial. It was then adjourned to November 1 at the suggestion of counsel for the defendant-petitioner who stated he would not be ready for trial before that date (see minutes, Appendix D, pp. 52-54, *infra*). For reasons unknown, however, the matter did not appear on the calendar on November 1, 1955, and on October 15, 1956, the defendant-petitioner moved to dismiss the indictment for lack of prosecution. That motion was denied on December 2, 1956 with leave to renew after April 10, 1957 (see opinion of McCullen, J., Appendix C, pp. 21-23, *infra*).

On February 4, 1957, the case was placed on the calendar of Part 5, General Sessions. On that date, the defendant-petitioner announced for the first time that he was ready for trial. At the request of the People, and owing to the fact that certain witnesses were then in India, the case was adjourned until March 11 (see minutes, Appendix D, pp. 55-56, *infra*).

On March 11, 1957, the matter was again adjourned, over the protest of the defendant-petitioner, on the grounds that one of the People's witnesses was ill in India (minutes, Appendix D, pp. 57-60, *infra*). The trial date was set for May 7, 1957.

Trial commenced on May 22, 1957.

In sum, the defendant-petitioner was indicted on October 15, 1953, and pleaded not guilty on October 19, 1953. Thereafter, the case appeared on the trial calendar seven times before the defendant-petitioner moved on October 15, 1956, to dismiss for lack of prosecution. On not one of those seven occasions did the defendant-petitioner express any objection to adjournment. In fact, on two occasions, October 23, 1953, and September 13, 1955, the adjournment was at the express request or suggestion of the defendant-petitioner who stated that he was not ready for trial. It was only after the motion to dismiss was denied that further adjournments were protested. In addition the defendant-petitioner made two pre-trial motions: one, on November 18, 1953, for a bill of particulars, the second on April 20, 1954, to inspect the Grand Jury minutes.

Question Presented

Was the defendant-petitioner deprived of due process of law by reason of the length of time which elapsed between his indictment and the commencement of the trial thereon?

POINT I

There was no denial of due process of law in the speed with which the defendant-petitioner was brought to trial.

Inasmuch as this Court has not held that the speedy trial mandate of the Sixth Amendment of the United States Constitution is applicable to state prosecutions, the issue herein is simply whether the lapse of time between the indictment and the commencement of the defendant-petitioner's trial was so extensive, arbitrary and prejudicial as to have deprived him of due process within the meaning of the Fourteenth Amendment. Yet, it is abundantly evident that the right to a speedy trial was in no manner abrogated in the instant case whether the traditional right be viewed in the broad perspective of due process or measured by the standards of the Sixth Amendment itself. Indeed, the facts and circumstances have already been held up to the test of the New York rule and, after close examination by the Court of Appeals, no offense to the state mandate has been discovered (see remittitur, as amended, Appendix A, pp. 15-16, *infra*).

Clearly, the determination of whether the defendant-petitioner lost his right to a speedy trial does not hinge solely upon the bare numerical count of the forty-three months which passed before his case was brought to trial. Inquiry must be made into the nature of the particular case, the reasons for the postponements of the trial, and above all, into the attitude of the defendant-petitioner himself during the rather extended pendency of the charges upon which he was ultimately tried.

The indictment charged a series of larcenies and attendant forgeries arising out of a complex commercial situation involving financial arrangements and transactions

between parties, individual and corporate, both in this country and abroad. The testimony of witnesses from India was required and able and experienced counsel for the defendant-petitioner himself stated on the record that the proper conduct of the defense required lengthy and involved preparation (see affidavit, Appendix B, at p. 18, *infra*). It was, in fact, for the purpose of allowing counsel an adequate opportunity to prepare for trial that a number of the early adjournments were had. It will be recalled that the prosecution was ready shortly after the defendant-petitioner was arraigned, and attempted to bring the case to trial before an essential witness departed for his native land on the other side of the globe. When it became clear that the defendant-petitioner would not be prepared for an early trial, efforts were made to perpetuate the testimony of this essential witness. Unfortunately, this anticipatory proceeding had to be abandoned and was voided by mutual consent.

Thereafter, the *bona fide* efforts of the prosecution to bring the case to trial were stymied by the absence of the Indian witness. This insurmountable obstacle to an immediate trial, a factor well known to the defendant-petitioner when he secured the adjournment in the early stages, was repeatedly acknowledged by the trial court (see opinion, Appendix C, pp. 21-23, *infra*) as well as defense counsel (see affidavit, Appendix B, pp. 17-20, at p. 18, *infra*). The defendant-petitioner apparently utilized the intervening time to ready his case. His motion to inspect the Grand Jury minutes was not filed until April 20, 1954. In addition, it is fair to infer from counsel's statement on the record that he too was awaiting a witness or witnesses from India or at least was undertaking procedures to obtain records or testimony from India (see Appendix D, at p. 34, *infra*).

In any event, it is clear from the record that the defendant-petitioner not only failed to protest or object to

adjournments, but actually requested, suggested, and consented to postponements up to the time that he filed his motion to dismiss the indictment for lack of prosecution. That motion was filed on October 15, 1956, after 36 months or about six-sevenths of the total period had elapsed. The decision of the Court of General Sessions disposing of the motion expressed the Court's belief that, under the unusual circumstances of the instant case, the reasonable period of delay extended to April 10, 1957 (see opinion, Appendix C, pp. 21-23, *infra*). The defendant-petitioner himself concedes that this finding is the "law of the case" (brief, p. 16). The trial was actually begun within six weeks of that date, a period which could hardly be deemed an unreasonable delay in view of all that had gone before.

Wholly apart from the justification for the delay by virtue of the impossibility of securing the presence in the jurisdiction or perpetuating the testimony of an essential witness, and ignoring the plain fact that a substantial portion of the time elapsed was required by the defendant-petitioner for the preparation of his defense, the time lag in the instant case constituted neither an unreasonable nor unconstitutional deprivation of the right to a speedy trial. This right, whether asserted under state law, the due process clause, or even the Sixth Amendment itself, is deemed to be a personal one and may be waived by the action or inaction of the accused whom it is designed to protect. In the instant case the picture of waiver is complete.

At this point it is our unpleasant task to note several grave and material misstatements of fact in the defendant-petitioner's brief to this Court. On pages 8 and 9 of that brief, counsel states that "the defendant, *once* sought a reasonable delay in the prosecution of the trial" (italics hers). On page 10, counsel states that each of the repeated adjournments after September 22, 1953, was "vigorously" protested. Again on page 15, the "real question" is

phrased in terms of the effect of a single request for adjournment by the defendant-petitioner. Indeed, the entire argument of the defendant-petitioner seems to be predicated upon this misapprehension of the facts (see brief 16). As has been previously noted, the record simply is not in accord with the defendant-petitioner's representation of it. Actually, the defendant-petitioner requested, joined in, or failed to protest each and every adjournment up to his motion to dismiss, never announcing his readiness to proceed until February 4, 1957, after more than thirty-nine of the total of forty three months had passed. Thus, on grounds of waiver alone, the present position of the defendant-petitioner is fatally unsound.

As the defendant-petitioner has forthrightly acknowledged, "[t]here is no dissent from the proposition that one may waive his constitutional or statutory right to a speedy trial, the right being a personal privilege and not of a jurisdictional nature, and not constituting any limitation upon the power of the state to prosecute" (brief, p. 21). Conveniently, counsel has listed authorities for this universal rule in sixteen American jurisdictions, including the federal (brief, pp. 21-23). Similarly, in the succeeding pages of her brief, counsel has restated corollary precepts, with voluminous citations, to the effect that requests for adjournments, failure to protest postponements, and even the filing of motions addressed to the indictment have all been regarded as waivers by the accused of his right to be brought speedily to trial (see brief, pp. 23-31, 34-38, *passim*). Indeed, the concept of waiver, inferred from conduct such as the defendant-petitioner exhibited in the instant case, is so universally established that a recapitulation of the authorities herein would be pointless and tiresome, particularly in view of the ample review afforded by the defendant-petitioner himself.

In view of the frank and explicit concession that the rules of the states and federal jurisdictions are uniform and clear concerning the issues of the instant petition, it is somewhat puzzling to find at the conclusion of the defendant-petitioner's brief, the prayer for the granting of certiorari based upon the assertion that there is a conflict of authorities (see brief, p. 47). While it is true that the circumstances of each individual case must be examined and the results perforce vary with the circumstances, yet the standards by which the facts are weighed reflect a singular accord among the reviewing authorities.

In the instant case, some of the operable factors are: the good cause for the delay; the diligent efforts of the prosecution to bring the case promptly to trial, or, in the alternative, to perpetuate certain essential testimony; the clear indication that the accused required a substantial period of time to prepare for trial; and the unmistakable consent and acquiescence by him to adjournments covering six-sevenths of the total elapsed time. In addition, there is the "law of the case" embodied in the decision of the trial court that the reasonable period of delay extended up to six weeks before the trial was actually commenced—that six weeks being clearly *de minimus* weighed against the forty odd months that went before. All of these factors are wholly inconsistent with the present claim of the defendant-petitioner that he was deprived of his right to a speedy trial. Moreover, as has been convincingly demonstrated in the defendant-petitioner's own brief, these factors would nullify his claim regardless of the jurisdiction or constitutional amendment under which it was asserted. Clearly, no violation of due process was incurred. Indeed, even if the explicit mandate of the Sixth Amendment itself were applied, no more convincing showing of good cause, coupled with waiver, would be required [see, e.g., *United States* v. *Kaye* (U.S.C.A. 1958) 251 Fed. (2d) 87, cert. den. 356 U. S. 919; see also, *Worthington* v. *United States*

(C.C.A. 7th 1924) 1 Fed. (2d) 154, cert. den. 266 U. S. 626, 45 S. Ct. 125, 69 L. Ed. 475; *Collins* v. *United States* (C.C.A. 9th 1946) 157 Fed. (2d) 409; *Pietch* v. *United States* (C.C.A. 10th 1940) 110 Fed. (2d) 817, 129 A. L. R. 563, cert. den. 310 U. S. 648, 60 S. Ct. 1100, 84 L. Ed. 1414; *United States* v. *Stein*, (D. C. S. D. N. Y.) 18 F. R. D. 17; *United States* v. *Provoo* (D. C. Md.) 17 F. R. D. 183, 198.

Conclusion

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK S. HOGAN
District Attorney
New York County.

RICHARD G. DENZER
H. RICHARD UVILLER
Assistant District Attorneys
Of Counsel

February, 1961

APPENDIX A

Order Amending Remittitur

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Thirteenth day of October A. D. 1960.

Present:

Hon. Charles S. Desmond, *Chief Judge*, presiding.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent-Appellant,

v.

LOUIS VON OSEH,
Appellant-Respondent.

A motion to amend the remittitur in the above cause having been heretofore made upon the part of the defendant herein and papers having been submitted thereon and due deliberation having been thereupon had:

Ordered, that the said motion be and the same hereby is granted. Return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Appendix A

"Upon the appeal herein there was presented and necessarily passed upon an alleged question under the Constitution of the United States, viz: Defendant contended that the right to a speedy trial as guaranteed by the Constitution of the United States was denied to him. The Court of Appeals held that there was no such denial and that there was no substance or merit to defendant's contentions."

And the Court of General Sessions, County of New York, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

GEARON KIMBALL
Deputy Clerk

APPENDIX B

Affidavit of Harris B. Steinberg, Read in Support of Motion to Dismiss Indictment

Indictment No. 3115—1953

COURT OF GENERAL SESSIONS

of the County of New York

PEOPLE OF THE STATE OF NEW YORK,

against

LOUIS VON OSEH,

Defendant.

State of New York,
County of New York, } ss.:

HARRIS B. STEINBERG, being duly sworn, deposes and says that he is the attorney for the above-named defendant and makes this affidavit in support of a motion to dismiss the action herein upon the ground that there has been undue delay in prosecuting the same, in that, without his fault, the defendant has not been brought to trial on the indictment herein, even though more than three years have elapsed since the defendant's arraignment under said indictment.

Appendix B

The indictment herein was found by the grand jury on October 15, 1953, and the defendant was arraigned on October 19, 1953, when he pleaded not guilty and was admitted to bail in the sum of $15,000.

A necessary and important witness on behalf of the prosecution is a citizen and resident of India and, understandably, this poses a problem for the District Attorney in that it is difficult for this witness to travel from India to New York. Since the witness had appeared in New York and testified before the grand jury in October, 1953, the District Attorney sought to bring the case on for trial on October 22, 1953, just a few days after the arraignment. However, the defendant personally and sought an adjournment for the purpose of making motions addressed to the indictment and for the purpose of preparing this case, which is a lengthy and complicated one involving many counts.

Accordingly, on November 9, 10, 12 and 17, 1953, it was sought to take a conditional examination of the People's witness from India in order to perpetuate his testimony. It soon developed, however, that this was a cumbersome and difficult process, and the proceeding was discontinued by consent on November 17th, and the witness returned to India.

On November 13, 1953, the defendant moved for a bill of particulars in Part I of this court, and the motion was granted in part and denied in part on December 1, 1953, with the result that the bill of particulars was filed by the District Attorney on December 10, 1953. On April 20, 1954, after extensive preparation and study of the case, the defense moved for inspection of the grand jury minutes in Part I of this court, and, on May 1, 1954, this motion was denied.

On January 7, 1955, the District Attorney moved this case for trial in Part IX of this court with the explanation

that he was not then ready, but expected to be ready on April 18, 1955, when his witness from India was expected to be in New York.

On April 18, 1955, the District Attorney stated to the Court that he was not ready to proceed because his witness had not appeared from India.

On September 13, 1955, the case was on the calendar in Part II of General Sessions for the purpose of fixing a trial date, but was adjourned to November 1, 1955. On that date the District Attorney stated that he was not ready to proceed because his witness was not here. It was explained to the court that both sides would be ready when such witness appeared.

On April 11, 1956, defendant moved in Part I of this court to reduce the bail of the defendant, inasmuch as he had been under indictment for a period of more than two years, had continuously resided in this city, was ready to proceed to trial, and was waiting for the District Attorney to produce the necessary witness. Since the District Attorney was not then ready, the bail was reduced to $1,500. The District Attorney stated in court at that time that he expected to have his witness in New York in October and would be ready to proceed to trial at that time.

In October, 1956, deponent communicated with the District Attorney's office and learned from Mr. Kidder, the Assistant District Attorney in charge of this case, that he is not now ready to proceed because his witness is not in New York, and he is in receipt of a communication from his witness to the effect that he does not expect to be in New York until April, 1957.

Deponent respectfully submits that defendant has been ready for trial for some months, and that, since he is laboring under the charge of a serious crime, he is being immeasurably harmed in the conduct of his business and in the making of his livelihood. Defendant is an engineer

and professional man and he is anxious to bring this trial on as soon as possible so that he may clear his name before a jury.

Accordingly, it is respectfully prayed that this Court make an order either dismissing the indictment for lack of prosecution or putting it on the calendar for immediate trial with the proviso that, unless an immediate trial is granted, the indictment be dismissed.

Deponent points out to this Court that he has a Constitutional right to a speedy trial and, although prior adjournments were with the defendant's request or his consent, he has been ready for trial for at least a year and has asked for a trial and is presently asking for a trial, and further delay will irreparably deprive him of his Constitutional rights both under the Federal and State Constitutions.

Wherefore, it is respectfully prayed that this Court make an order dismissing the indictment for lack of prosecution, or, in the alternative, fixing an immediate trial date with the proviso that the indictment be dismissed unless it be brought on for immediate trial.

Dated: New York, N. Y., October 8, 1956.

Harris B. Steinberg

Sworn to before me this
8th day of October, 1956.

Arnold Meier
Notary Public, State of New York
No. 24-2650000
Qualified in Kings County
Commission Expires March 30, 1957

APPENDIX C

Opinion of Edward J. McCullen, J. Denying Motion to Dismiss Indictment

COURT OF GENERAL SESSIONS

County of New York

Indictment No. 3115—1953

The People of the State of New York,

against

Louis Von Cseh,

Defendant.

In this motion on notice to the District Attorney of the County of New York for an order dismissing the indictment for want of prosecution pursuant to Section 668 of the Code of Criminal Procedure, I can well understand the reason the defendant makes such an application.

The indictment was found by the Grand Jury of the County of New York on October 15, 1953, and the defendant was arraigned on October 19, 1953, pleaded not guilty and was admitted to bail in the sum of $15,000. The District Attorney endeavored to bring the case on for trial on October 22, 1953, just a few days after the arraignment, but the defendant protested and successfully sought an adjournment for the purpose of making motions and for preparation of the case which is a lengthy and complicated

one involving many counts. On November 9, 10, 12 and 17 of 1953, it was sought to take a conditional examination of the People's witness from India in order to perpetuate his testimony. It developed, however, that this was a cumbersome and difficult process and the proceeding was discontinued by consent on November 17 and the witness returned to India. On November 13, 1953, the defendant moved for a bill of particulars, which motion was granted in part and denied in part. The bill was filed by the District Attorney on December 10, 1953. On April 20, 1954 the defense moved for an inspection of the Grand Jury minutes and on May 1, 1954 this motion was denied. On January 7, 1955, the District Attorney moved this case for trial in Part IX of the Court of General Sessions with the explanation that he was not then ready but expected to be ready on April 18, 1955 when his witness from India was expected to be in New York. On April 18, 1955, the District Attorney stated to the then Court that he was not ready to proceed because his witness had not appeared from India. On September 13, 1955, the case was on the calendar in Part II of General Sessions for the purpose of fixing a trial date, but was adjourned to November 1, 1955. On that date the District Attorney is alleged to have stated that he was not ready to proceed because his witness was not available." It was explained to the Court that both sides would be ready when the witness appeared. On April 11, 1956 the defendant moved to reduce his bail, in as much as he had been under indictment for a period of more than two years, had continuously resided in this City, was ready to proceed to trial, and was waiting for the District Attorney to produce the necessary witness. Since the District Attorney was not then ready, the bail was reduced to $1500. The District Attorney stated in Court at that time that he expected to have his witness in New York in October and would be ready to proceed to trial at that time.

Appendix C

Come October 1956, the District Attorney stated he was not then ready because his witness was not in New York and stated he is in receipt of the communication from that witness to the effect that he does not expect to be in New York until April 1957.

The District Attorney states the indictment by which this defendant is charged with specific crimes is a meritorious one and should proceed to trial. I appreciate the difficulty the District Attorney is having with his witness who is not in this country. However, the rights of the plaintiff must also be protected. This motion is denied with leave to renew on or about April 10, 1957. If the case does not then proceed to trial, the indictment should be dismissed. I make this qualified latter statement for the reason that I will not be a Judge of the Court of General Sessions beyond January 1, 1957 and I believe I have no right to bind any other Judge of this Court in his judicial endeavors.

Edward J. McCullen
J. C. G. S.

November 21, 1956.
Filed
Part I Nov. 21 1956

APPENDIX D

Minutes of Adjournments

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK, PART ONE

THE PEOPLE

vs.

LOUIS VON CSEH, *defendant.*

Hon. JONAH J. GOLDSTEIN, Judge.

N.Y Oct. 19th 1953.

Appearances:

HARRIS STEINBERG, Esq. for defendant.

JOHN LEIBELL, Esq. A. D. A. for the People.

The Clerk: People against Louis Von Cseh.
(Defendant brought in on a warrant).
Louis Von Cseh, you are indicted charged with the crime of grand larceny in the 1st degree. Do you wish to plead now?

Mr. Steinberg: Your Honor we waive the reading of the indictment and we plead not guilty.

The Clerk: How do you plead, guilty or not guilty?
Defendant: Not guilty.

Appendix D

Mr. Leibell: Your Honor, I am Mr. John Leibell Assistant D. A. assigned to the Fraud Bureau. The People in this case respectfully recommend that bail be set in the amount of $50,000. There are three reasons for that recommendation. First of all, the indictment charges very serious crimes. The charge is a larceny of 230 and some odd thousand dollars. There are also counts that charge a forgery of a receipt in the amount of $185,250.

Now, the second reason, your Honor, is that as far as I know this defendant has no real roots in this community that would prevent him from leaving the jurisdiction. He resided in India from 1946 to 1949 and only came to New York in connection with business trips.

Now, the third and the last reason and one that I feel has a distinct bearing on the bail that should be set in this case is information that came to me just recently. I have been informed that one of the witnesses for the people who is here from India was walking on Madison Avenue last Thursday afternoon when he was approached by the defendant who said if you poke your nose into this litigation I'll see that you don't leave New York alive.

Now, it's for those three reasons, your Honor, that the People recommend here that bail be set in the amount of $50,000.

Mr. Steinberg: May I be heard, Your Honor?

The Court: Yes.

Mr. Steinberg: If your Honor please, I appear for the defendant, and, frankly Mr. Leibell's statement seems to me preposterous. His statement that this man has no roots here is false. This man has never been entangled with the criminal law before.

The Court: Is he married or single?

Mr. Steinberg: He is married.

The Court: Where does his wife live?

Mr. Steinberg: He lives at 1158 5th Avenue with his wife. He owns an apartment there. They live there for the last four years. He is an American citizen. He is an engineer, and he carries on business here.

The Court: Are there any children?

Mr. Steinberg: He has no children, your Honor. As I understand the purpose of bail is to insure a man's being in court when he is wanted, and it is not to punish him or to make a Roman holiday of his case. Now, the facts in this case are that the charges alleged in the indictment go back more than five years. The District Attorney is bestirring himself a little belatedly. Furthermore, your Honor, in 1950 this man brought a lawsuit against the complainants in India for $350,000 which lawsuit remains undecided. A year and a half ago, your Honor, the complainant brought a civil action against this defendant here in New York Supreme Court and a counterclaim of $350,000 has been interposed. That lawsuit has been going through preliminary stages and will be tried here in the Supreme Court. Frankly, it is an amazing thing to me that the District Attorney who for many years has followed a policy of not interfering in civil litigation and in letting his office be used to pull someone's chestnuts out of the fire for him, has seen fit to indict at this time on the eve of the civil trial.

I don't see how a man can be expected to get a fair trial from a jury when he has been plastered all over the newspapers as a man under an indictment. Now, if your Honor pleases, about two weeks ago when I heard this case was being presented to the grand jury I called Mr. Leibell and I said I understand you are going to present a case to the grand jury, and when and if you should decide to bring an indictment and there is a warrant for him let me know and I will be glad to bring him in. I

wasn't told that there was an indictment but a policeman presented himself at the defendant's home at a time his wife was in and he was out and being told there was a warrant I promptly produced him. That was a Friday when I told the district attorney's office that he is available any time they want him. There was no stricture of his escaping over the weekend, and I made an appointment at 9:30 this morning to bring him in, and at 9:30 this morning he walked in. We are prepared to offer bail here your Honor. This is a case that has been pending for more than five years, and the district attorney has been investigating it for about two years.

The man has been here, and there is absolutely no reason to punish him by raising bail and making him enrich a bondsman when the only purpose of bail is to have him in court when he is wanted, and he will be here, and everything that has happened to date shows he will be here.

Now I want to address myself to that hearsay statement of the supposed threat. I wasn't there and Mr. Leibell wasn't there but my client assures me that that did not happen. That's all I can offer your Honor in all candor. However, only as recently as this month I personally was approached by emissaries of the complainant with an offer to settle this case civilly and they would drop the criminal case. I refused that offer, your Honor. There are tribunals to determine issues of guilt and issues of fact. This has been pending in the Supreme Court for a long time and it will be determined there although it is made considerably more difficult by the interposition of this indictment at this time, but I respectfully say to your Honor that to impose any bail in any such amount would be an abuse of discretion, and I know your Honor will not do that.

Appendix D

The Court: Did this defendant appear voluntarily or was he brought in under the warrant?

Mr. Leibell: Your Honor, I sent a detective to the defendant's apartment early Friday morning, and the detective got there about 7 o'clock and the defendant was not there at that time, but his wife was, and then Mr. Steinberg.

The Court: Did the detective identify himself?

Mr. Leibell: The detective is here in court, Detective Fitzpatrick.

The Court: Let him come up.

Mr. Leibell: He was unable to execute the warrant at that time, but later the defendant surrendered.

The Court: When you went to the defendant's home what did you tell his wife?

Detective: I asked to see Mr. Von Cseh and she said he was out.

The Court: Did you say who you were?

Detective: Yes, sir.

The Court: What did you tell her?

Detective: I told her I would like to see Mr. Von Cseh and it was very important that he contact me.

The Court: Did you leave your name?

Detective: Yes, sir, I did.

The Court: Did you tell her you were a detective?

Detective: Yes, sir.

The Court: And you told her where the defendant could contact you?

Detective: That's correct, sir.

The Court: The precinct?

Detective: Yes, sir.

Mr. Steinberg: May I supplement that. I don't think I made it clear to your Honor but after that morning conversation I spoke to the detective, and this was in

my office and it wasn't until I got there with the Felony Court proceeding that I called Mr. Kidder, Mr. Leibell's superior, and arranged to have him brought in, and Mr. Kidder said it was late Friday and we won't be able to get a Jundge for fixing bail, why don't you bring him in on Monday—and, I did bring him in on Monday.

The Court: What bail does the defendant offer?

Mr. Steinberg: Your Honor, if this were not a case where they are spinning a romance I would say parole him in my custody, but in view of the fact that we are hearing a scenario all over again, and I wasn't privileged to be present at the press conference, I say $5,000 is sufficient.

The Court: Will both counsel step up. (Conference). On consent, bail $15,000.

Mr. Steinberg: Will your Honor be good enough to parole him in my custody until the bond is re-written. I have a boindsman here, Mr. Topper, who is ready to write the bond.

Mr. Kidder: I feel the defendant should remain in custody until the bond is posted.

The Court: All right. ($15,000).

E. Morris.
Official Stenographer.

Appendix D

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK

PART FIVE

Case No. 3115—1953

THE PEOPLE OF THE STATE OF NEW YORK,

against

LOUIS VON CSEH

N. Y. City, October 23rd, 1953

Indictment for Grand Larceny in the first degree; forgery in the second degree; indictment filed October 15th, 1953; Case No. 3115—1953

Present:

Hon. JOHN A. MULLEN, J.

Appearances:

Jerome Kidder, Esq., A. D. A.
John J. Leibell, Esq., A. D. A.
For the People;

Harris B. Steinberg, Esq.,
For the defendant.

Appendix D

The case is duly called on the Trial calendar and counsel answer on both sides.

The Court: Good morning. Hello, Mr. Steinberg, how are you?

Mr. Kidder: The People are ready, Your Honor please. It is a matter of when we will reach the trial.

Mr. Steinberg: It is not as easy as that; saying "the People are ready." As Your Honor knows, this case—

The Court: I know nothing about it.

Mr. Steinberg: I am sorry. I thought perhaps you did.

The Court: This is the first time I hear of it.

Mr. Steinberg: This is the result of a very lengthy investigation by the District Attorney's office—I think I am correct—two years or more.

There is a thirty one count indictment against this man, which is for larceny, going back for a period of beyond the statute of limitations and forgery counts.

The man was arraigned on the indictment by the District Attorney only Monday of this week.

The Court: Yes.

[Mr. Steinberg:] And this case involves very tortuous and complicated corporate transactions, most of which stem from transactions in India. Many of the witnesses here are from India.

The Court: India?

Mr. Kidder: Two of the people are from India. They are here. That is one of the reasons why the people are pressing for as early as possible on the trial.

Mr. Steinberg: One thing at a time. I think Mr. Kidder mentioned the fact that he is anxious to try the case because the witnesses are from India. I presume that if he could get his witnesses here from India, as now appears, he can get them again if a man's liberty is at stake.

The Court: What is the nature of the theft?

Appendix D

Mr. Steinberg: The alleged theft in the indictment is over $230,000.

The Court: What is the nature of it?

Mr. Kidder: There was a transaction here where the Indian Government was getting heavy machinery and electrical equipment. This defendant and others were engaged to supervise in handling these transactions.

The Court: Engaged by whom?

Mr. Kidder: By an Indian Corporation known as Man Radio & Electricals Ltd. I don't know exactly the title. But they, in turn, were acting in behalf of the Jaipur Government that purchased it.

Letters of credit in the amount of about one [million] dollars were set up here for these procedures.

This defendant and others managed, by over-invoicing the material, to build up a very substantial amount on the letters of credit, over the purchase price in the amount of about $250,000.

This defendant induced this corporation which was handling part of the transaction, to put these moneys in his hands, theoretically to be held for the order of the corporation.

Instead of that, he appropriated to his own use about two hundred thousand dollars of that money.

When he was asked to account for it by one of the directors of the corporation, he produced what purported to be a receipt of a man by the name of Col. Maharaj Prithi Singh of Baria, acknowledging receipt of about one hundred and eighty thousand dollars of the money.

I believe that the People will be able to establish that that receipt is a forgery.

The Court: That is enough.

Mr. Steinberg: If the witnesses are here—and I interrupt—they can do either one of two things. They either can wait until we have had adequate time to prepare and

bring them back, or if that is out of the question, inconvenience, expenses, etc., there is the stenographic procedure, which is available to him to perpetuate the testimony. I would be glad to perpetuate the testimony.

The Court: How much time do you want?

Mr. Steinberg: Let me say this your Honor.

The Court: Yes.

Mr. Steinberg: To-morrow I will be in a Part before Mr. Justice Irving Levy, Part 15 of the Supreme Court. I am picking a jury at 10 a. m. on Monday. It is anticipated by the parties to that case that it will occupy the remainder of next week. Then I have several other matters pending.

I want to get to trial of this, too and I think it is more important, once that other case is over.

Then here there is the question of making motions. Normally you have ten days to two weeks. This indictment, on the face, calls for the making of motions.

Then we have the other side of the picture of Mr. Pollock representing this man in civil suits which are pending and have been pending for a long time involving the same subject matter.

The Court: Mr. Pollock? He is to be present at the trial of this case?

Mr. Steinberg: Yes.

The Court: You are not engaged in any long trials that are going to tie you up?

Mr. Pollock: I hope by that time I will be available. I do not expect to be tied up. I have several matters which are pressing. One of those cases has been placed on the calendar in September with a preference for a January trial. There is examination before trial and I expect to be tied up between now and New Years Day on that.

Mr. Steinberg: I think before we go to trial, which I would be happy to do before Your Honor or some other Judge of this Court, we will have to issue depositions to take a deposition in India. We have to question several witnesses. We will be glad to sit down and tell Mr. Kidder exactly what we hope to prove by these witnesses, who they are and everything else.

We could have them come here, too, voluntarily, but we do not have the facilities of the District Attorney's office perhaps and for us it is more difficult.

The Court: It does not look like a case that is going to an early trial.

Mr. Kidder: I might say, as far as defense counsel being familiar with the subject matter of this indictment, Mr. Harris Steinberg, the civil action with which this gentleman is directly concerned, they have been working on that for about a year and a half.

Mr. Steinberg: Not a year.

The Court: How soon—

Mr. Kidder: They have been aware of the criminal procedure then at least several months. When we went to the apartment with the search warrant, that was several months ago.

Mr. Steinberg: More than that.

Mr. Kidder: Actually the delay in the indictment, in getting the indictment was a matter of getting the people here from India, because we had to have them.

Mr. Steinberg: May I interrupt just one moment? If it were the fact that the delay in obtaining the indictment here was due to the delay in getting people from India, I am sure we will have at least that much time to get people from India.

Mr. Kidder: As far as people from India goes, I think it comes within your rights to make a motion to the Court to take a deposition.

Appendix D

The Court: I haven't any doubt that they will need depositions from India.

Mr. Kidder: I honestly do not see the reason for it at all. And until I am told who the witness is and what he is supposed to testify.

Mr. Steinberg: I leave that to Mr. Pollock, who, as I say frankly, is more familiar with it than I, because it has not been necessary for me to go into the matter. Mr. Pollock is willing to tell you what we have in mind.

The Court: I do not care what you have in mind. You tell me that you need a deposition and Mr. Pollock. That is good enough for me.

Mr. Steinberg: Your Honor I say that with all good faith as an officer of the Court.

Mr. Kidder: In view of the defendant's statement about witnesses, as far as he is concerned, this is going to take a couple of years to get rid of.

The Court: It may be something like that. How soon can you get your depositions that you require?

Mr. Steinberg: Here is the thing. I expect to by the end of this month to be through with my case.

The Court: I am talking to you Mr. Pollock.

Mr. Steinberg; There is only one other thing I do want to mention, to try to give some indication as to time; as to when I will be available for anything.

I have, December 18th, I have reservations to take my wife and children on a fifteen day cruise. There are the tickets which we bought in February of this year. I would not want to interfere with that. I would not want to interfere with that. Other than that, Your Honor, I will start in November working on this case, November first. As fast as I can bring it to a speedy trial, I do not see how anything can be done until after the first of the year.

The Court: How long will it be?.

Appendix D

Mr. Kidder: I would imagine Your Honor, that the People's case will take about a week.

Mr. Steinberg: I will say, after conferring with Mr. Pollock, who is an experienced lawyer, that this case will take a minimum of six weeks to try.

The Court: Well—

Mr. Kidder: Well I will tell you what Your Honor.

The Court: Then if you go over until that date, Mr. Steinberg, then it is going to be mixed up with that civil case of Mr. Pollock.

Mr. Steinberg: I will say this: that I will undertake and I think Mr. Pollock will, that when this case should be ready, if Mr. Pollock is actually engaged in any trial, it is my primary responsibility. I was retained and Mr. Pollock is to assist *me*. But I will not come to this Court and say that Mr. Pollock is tied up in a lengthy civil case.

Mr. Pollock: If I may add a word. I must confess that I am utterly unprepared in this case, but for reasons beyond my control.

When I got into the matter there was already some inquiry by the District Attorney's office, but the complainant people decided for themselves and made the identical claim in the Supreme Court, New York County, last December, with the summons and complaint for the identical amount of money and so on.

Immediately they started the civil proceeding, I endeavored—it is a complicated corporate accounting question. It is not the simple thing that appears in the indictment.

I am sure the lawyers for the State have chosen what they think could be tried; but the substance, the meat of it is more than that.

Accordingly, when the case was started, I endeavored by cabling to India, to endeavor to get at the corporate books, records, papers and facts, because there are mutual accounts back and forth on each side.

Appendix D

I discovered that my cables were being routed back to the attorney for the complainant in this case, a gentleman by the name of Kresing. I was told that I could not have any information from India.

I made a motion in the State Court for examination of either of the principals, one of whom is now in India. Judge Hecht granted that examination. To this day I have not been able to get it. I was confronted at that time, trying to get the books and records, with the story that these people are here. When they come into the jurisdiction for the purpose of trial, thirty days before the trial Mr. Pollock is to have every opportunity of inspection.

I discovered that Mr. Steinberg has been working on the criminal side; and I have been busy on the other end. I discovered that one of these people was in New York. Immediately I discovered that, after he had been here two weeks, I applied to Judge Hecht for an immediate examination of that man because that examination of that individual who is here will just open this thing up and show where the books are, the corporate records and books of account to make a thorough study and analysis of this thing, so as to be able to put the pieces together in the ultimate end of a fair and just disposition so that all of these facts come out on the table. That is all.

Mr. Kresing, the lawyer who appears for the complainant individually communicated to Judge Hecht and said this: "Do not let us examine this man even though he is here in the jurisdiction, because he is here in connection with a criminal case; I have talked to the Assistant District Attorney; they tell me they are going to move for an immediate trial. This is just a trick of Mr. Pollock to get this man's testimony."

Confessedly I am trying to get the man's testimony, because how can you talk about corporate transactions which are had at a distance of 10,000 or 15,000 miles about

books and papers and records that are not here, until you get somebody?

On the basis of that statement, we have been prevented from any examination until five days after this trial.

The Court: You are hooked.

Mr. Pollock: On the representation that the District Attorney needs this man.

I asked Mr. Leibell this morning to make sure, so that Mr. Steinberg would appreciate the same thing I do,—Mr. Leibell's frank attitude. There has been a very conciliatory attitude, strictly in accordance with the best interests of the public, I must say.

I asked him this morning—I said "Well now, where are the books, the records? Have you any objection to my beginning this inquiry, so that actually I may be able to establish the whole truth, because the People do not want to be taken over by a complaining witness who gives part of the story about complicated corporate transactions"

I must say, Your Honor, that on the limited knowledge that I have now—on the basis of the investigation there are grave implications here which involve this man who, on the strength of whose testimony this indictment was procured. There are grave implications that he is at the bottom of a scheme, a fantastic scheme, only one that could be conjured up out of India perhaps.

And consequently, here I am in a position, where I should be prepared after these eight or ten months having the case, having been frustrated by the complainant and his lawyer when I tried to go into it; and having been frustrated to-day a second time on the theory that the People need this man, therefore I should not examine him.

The Court: You may examine any witness.

Mr. Pollock: Now says Judge Hecht—Mr. Kresing in his motion called this to his attention and the Judge did the obvious thing, but he did not know what was going on

in the back ground. He said "All right, he will be examined, five days after the criminal case is over."

Now in a situation like this I do not know what the philosophy is; but it seems to me that where complaint is made and particularly do I feel, here is a lawyer in New York on a contingent basis—I am reliably informed fifty percent contingent fee, and then after he ran around to the District Attorney's office he starts a civil suit and then tries to suspend the inquiry to make grave charges involving large sums of money and dramatic accusations, and then stops me from completing an examination, I respectfully suggest that it would be in the interests of justice that the civil case be tried first—for in the criminal case if the man has committed a crime, it will come out there; all interests will be safeguarded and the mutual accounts will be adjusted right then and there.

There is no statute of limitations question involved any more because there is the indictment. But as I say—.

The Court: Well, we cannot fix upon any particular date very soon, yet you must go to work on your case.

Mr. Pollock: But I am trying to explain.

The Court: You have a perfect right to see this man. There is no compulsion on him to talk to you. He is not under the order of Judge Hecht. We do not issue orders in this Court that any witness must not talk to anybody. There is no such thing as a witness who belongs simply to the District Attorney. He is available to anybody.

Mr. Steinberg: One other suggestion. Perhaps this will help Mr. Kidder in his problem of this witness being here at expense and trouble.

Let us sit and take this man's deposition. If he is going to be here at the time of trial we do not need it. I know there is matter in that examination that will show Mr. Kidder that he is a crook.

Appendix D

The Court: Why wouldn't it be a good idea to examine this fellow and have the District Attorney present at the time?

Mr. Kidder: I oppose any preliminary examination of my witness. The Government has not the right to examine their witnesses.

The Court: They have a right in a civil action.

Mr. Kidder: I do not see the civil action as a cause to examine the People's witness, any more than I would have the right, if the defendant had a witness, to call him in before the Grand Jury.

The Court: I do not say it is done in the case of anything else, but there is a double transaction. It is with respect to the same subject matter.

Mr. Steinberg: We are at a disadvantage over this. While Your Honor sees two transactions which clash, we get it on each end because of the clash and because Mr. Kresing, who is collaborating with Mr. Kidder says he does not want this man examined in the civil Court and leans on that to get us frustrated over there.

The Court: Does the District Attorney aid in keeping the man from being examined by legal action?

Mr. Kidder: We would oppose.

The Court: Did they take a position?

Mr. Kidder: We did not appear before Judge Hecht but we did request Mr. Kresing to state that we were ready to go to trial and did not like the examination before trial to deter us.

Mr. Pollock: We got an order to examine in April.

Mr. Kidder: He was not here.

Mr. Steinberg: Because you did not bring him here, but when he got there it is all right for you and Mr. Kresing to tell the Judge—

Mr. Kidder: I might say to the Court: ordinarily when a witnesss makes himself available to the State

voluntarily—when he is outside of the jurisdiction of the People and makes himself available to the People voluntarily, that his voluntary appearance in this State, ordinarily, as I understand the law, exempts him from service of process or anything else.

The Court: That is only Judge Hecht's opinion.

Mr. Kidder: I think it is designed to protect a witness who comes here to aid the People. I don't think his coming here to aid the People—

The Court: I do not think that applies to a voluntary appearance. I think it applies—

Mr. Kidder: It does.

The Court: It applies to compulsory appearance.

Mr. Steinberg: I have so much confidence in Mr. Kidder's mental fairness that I want to say, I will be glad to show Mr. Kidder a couple of telegrams, if he wants, that we have, which should convince him that there is never a doubt that Mather [*sic*] his witness is a crook.

Mr. Kidder: If you were to tell me—I will say this: when I go to trial with this case, the chances are that I will tell the Jury, that Mathur is as big a crook probably as your man.

Mr. Steinberg: On that statement, if he acknowledges that Mathur is a crook, Mathur is his principal witness on whom the case depends, shouldn't we have a chance to examine that man before trial?

The Court: It will be for the Jury to determine that.

Mr. Steinberg: The thing is this: to help to get at the truth in the trial. You don't know what the truth is. You weren't there; neither was I; but if he acknowledges that Mathur his principal witness is a crook, if we have a chance to examine him, we can then get other, impartial witnesses to produce evidence on the main charge in issue.

The Court: Even if he proves a crook, he may be proven other things that he does not know at the present time.

Mr. Steinberg: I do not say he is a crook.

Mr. Kidder: My. Mathur's participation in them, they will go into.

Mr. Pollock: We have not got the corporate books and records. They are in New York. They are needed for this trial.

The Court: Trial procedure, documents that the defense may need, something which should be gotten by deposition maybe as soon as possible.

Mr. Kidder: He can move to take a deposition at the earliest possible date. The Court will then pass upon whether those witnesses are necessary.

The Court: Why don't you do that?

Mr. Steinberg: All right.

The Court: It looks to me like—

Mr. Steinberg: I think that is a fair suggestion.

The Court: That is vitally necessary here. If we can come to an agreement—Mr. Pollock has a case in the Federal Court. So that should not be a reason for a delay.

Mr. Steinberg: Right.

Mr. Kidder: Mr. Leibell was wondering whether we were going to fix a date for trial.

The Court: Just to keep on top of it. Not with any definiteness in a situation like this. I can see that they have to have a chance.

Mr. Steinberg: Do you want to go on the first week in January?

Mr. Kidder: I would suggest a maximum of ten days so that we can make a commission.

Mr. Steinberg: I am actually engaged in the meanwhile.

The Court: You will be on trial all next week.

Mr. Steinberg: Yes.

Appendix D

The Court: That will take you up to the 30th. Then we have Election Day. We do have the 11th, a holiday. And we have—let us say by the 13th of November, that is the end of that. That gives you—

Mr. Steinberg: Make motions addressed to the indictment.

The Court: And the motions addressed to the indictment.

Mr. Kidder: Make all motions with respect to depositions.

Mr. Steinberg: I cannot undertake that for this reason I have to give you. I have to soak up an awful lot and study to know who is to testify to what. I will go to work on that as soon as I get through the trial. If I can make it by the 13th, I will make it that one day. If I cannot I will give you a ring and let you know what or when, as soon as possible.

The Court: Try to do it.

Mr. Kidder: You will do the best you can.

The Court: In good faith. That is all you can do.

Mr. Steinberg: I will.

The Court: You cannot do other than that.

Mr. Kidder: It would seem that after these seven months—

Mr. Steinberg: I did not see your indictment until Monday.

Mr. Kidder: There was never any mystery about what this fellow was going to be indicted for.

Mr. Steinberg: It was a great mystery to me.

The Court: There is no chance of disposing of the case?

Mr. Steinberg: No. Not unless they D. O. R.

Mr. Kidder: This man approached our witness at some set date and told him that he was going to stall for two years. I might as well tell it.

Appendix D

Mr. Steinberg: This is something—Mr. Kidder was not present. I was present at one meeting and I tell you of my own knowledge as an officer of the Court that Mathur approached me with a proposition if a certain amount of money were paid he would disappear.

The Court: That is with respect to Mathur. However, please impress on your client, the defendant, that if it is established as a fact that witnesses are attempted to be put out of circulation, concerning a trial, then we might put extra pressure on you gentlemen to work fast. We don't want anything like that.

I don't know anything about it. I am passing no judgment.

Mr. Steinberg: Your Honor I suggest November 13th for that purpose.

The Court: The 13th to get the motions addressed to the indictment. And try to go as far as you can with the motion with respect to the commission. At least you might well find it possible to get together with Mr. Pollock and dictate the bases for your application for the depositions, so that it will be based upon the importance of those proposed witnesses in the trial. Could you do that?

Mr. Steinberg: I will try to co-operate with Mr. Kidder in that, because he undoubtedly will have to get their names, because he will have questions in cross.

Mr. Kidder: I think we ought to get a copy.

Mr. Steinberg: We will probably have to do that. Somebody has got to take the deposition.

Mr. Kidder: We ought to see who the witnesses are: what they are expected to testify to. It may be that the Court will not find it relevant. Maybe I can even stipulate. I do not know.

Mr. Steinberg: We will get to that as quickly as we can.

Appendix D

The Court: Oh that get together and Mr. Pollock can proceed. Because unless you get tied up in some other matter then you are the chief person that has to be consulted on some of these matters which will delay the trial, to the extent—

Mr. Kidder: I think that there is hope that the longer it is delayed the better chance it has.

The Court: I never saw a defendant to lose by delay. I am well aware of that.

I know that you are dealing with lawyers for whom I have the highest respect and whom I know are very often engaged in long trials. That is all. You have legal excuses. You just cannot overlook that. Now there seems to be a little bit of a lull here.

Mr. Steinberg: What about a month from now for the reporting date? Let us not put it off too long.

The Court: No. The 13th.

Mr. Steinberg: You want a brief on that date?

The Court: On the 13th. Do the best you can. Work hard. That is all.

Mr. Steinberg: November 13th in Part Six, Your Honor, having spoken about it now and gotten the background—

The Court: I do not know that the case is going to be before me.

Mr. Steinberg: I mean for the next adjourned date for the purpose just for reporting, so that we can then see what the status is, in order to keep on top of it and eventually fix the date.

The Court: Well I do not want to direct the entire order of procedure here. The District Attorney controls the calendar and puts it wherever he wants to. I do not want to deprive him of going before some other Judge, if he sees fit to try the case there, or make any further motions.

Mr. Kidder: As far as I am concerned, it is fine. If Your Honor wants it before you, it is perfectly all right.

The Court: It does not make any difference to me.

Mr. Kidder: I am not trying to stick you with a long case.

The Court: Whatever is on my calendar I dispose of to the best of my ability. I won't take anything off or put anything on.

Mr. Steinberg: Which will it be, the 13th?

The Court: November the 13th. Leave it in the Part wherever it is. If and when it is in a particular Part before me, the District Attorney has control of that. I do not want to do something that controls him on his calendar arrangements.

Mr. Steinberg: Thank you Your Honor.

Patrick J. Begley
Official Stenographer.

Appendix D

COURT OF GENERAL SESSIONS

COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

against

LOUIS VON CSEH.

Part V—November 13, 1953

Before:

Hon. ABRAHAM N. GELLER, Justice

Indictment Number 3115—53

Indictment filed October 15, 1953

For the People: Asst. D.A. J. Kidder

For the Defendant: H. Steinberg, Esq.

EUGENE A. SATTLER, C.S.R.
Additional Court Stenographer

Appendix D

The Clerk: People vs Louis Von Cseh.

Mr. Kidder: On this matter, Your Honor, we are at present perpetuating the testimony of our Indian witnesses before Judge Streit. It's been a very slow and painful process up to this point. It looks like it will take a few weeks to have it—

As Your Honor knows, I have that Japanese case that will be coming up. So I would suggest adjourning this for about two weeks until we all see where we stand at that time.

The Court: The 27th of November.

Mr. Kidder: Will there be Court on that date. As far as I'm concerned on that day—

The Court: What is the idea. Let's put it down for a different date. The 30th.

Mr. Steinberg: Bail continued?

Mr. Kidder: No objection.

The Court: November 30th. Bail continued.

I Do Hereby Certify that the foregoing is a true and accurate representation of the stenographic notes taken on the calendar call of Part V on Friday, November 13, 1953 before Hon. Abraham N. Geller.

Dated, New York, January 18, 1961

Eugene A. Sattler, C. S. R.
Additional Court Stenographer

Appendix D

COURT OF GENERAL SESSIONS

COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

against

LOUIS VON OSEH.

Part V—November 30, 1953

Before:

Hon. ABRAHAM N. GELLER, Justice

Indictment Number 3115—53

Indictment filed October 15, 1953

For the People: Asst. D. A, S. Leibell

For the Defendant: H. Steinberg, Es

EUGENE A. SATTLER, C. S. R.
Additional Court Stenographer

Appendix D

The Clerk: People vs. Louis Von Cseh. Mr. Steinberg.

Mr. Leibell: Your Honor, in this case the People request that it be marked off the calendar at this time. Two of the witnesses for the People have returned to India in view of the fact that an early trial was out of the question.

We hope to have it restored to the calendar so that it can be tried sometime in March or April.

Mr. Steinberg: No objection, Your Honor.

The Court: This is the matter I had the motion in Part I.

Marked off the calendar by consent.

Mr. Steinberg: Will Your Honor continue bail?

Mr. Leibell: No objection, Your Honor.

The Court: Bail continued.

I Do Hereby Certify that the foregoing is a true and accurate representation of the stenographic notes taken on the calendar call of Part V on Monday, November 30, 1953 before Hon. Abraham N. Geller.

Dated, New York, January 18, 1961

Eugene A. Sattler, C. S. R.
Additional Court Stenographer

Appendix D

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK—PART 3

THE PEOPLE

against

LOUIS VON CSEH.

New York, April 18th, 1955.

Before:

Hon. JONAH J. GOLDSTEIN, J.

Indicted for grand larceny.

Appearances:

For the People: Assistant District Attorney Carl Vergari, Esq.

For the Defendant: No appearances.

(The defendant was not arraigned.)

The Clerk: People against Von Czeh [*sic*].
Mr. Vergari: Will you mark this off calendar.
The Court: Off calendar.

Reginald C. Mershon,
Official Stenographer.

Appendix D

COURT OF GENERAL SESSIONS OF THE COUNTY OF NEW YORK, PART TWO.

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

LOUIS VON SCEH [*sic*], defendant.

Before:

HON. JACOB GOULD SCHUEMAN, Judge

N Y Sept. 13th 1955.

Appearances:

JEROME KIDDER, Esq. A.D.A. For the People.

HARRY STEINBERG, Esq. for the defendant.

The Clerk: People against Louis Von Czeh [*sic*].

Mr. Kidder: Your Honor, in this matter I put this case on the calendar primarily for the purpose of fixing a date for trial. The People would have to bring at least two witnesses here from India. I understand they will be able to come towards the latter part of October.

The Court: What part of India?

Mr. Steinberg: Jaipur.

Mr. Kidder: Yes; Jaipur.

The Court: That's the northern part.

Mr. Kidder: Yes. We tried to perpetuate their testimony but with language difficulties and other complications we never succeeded in completing that, so we will have to bring them back, and if possible we would [like] to set it down sometime toward the middle of October.

The Court: What are the occupations of the witnesses? It is suggested the middle of October.

Mr. Steinberg: I spoke to Mr. Kidder yesterday, and I realize there is a process that must go through, that the case must go through to get to actual trial. It has been a number of years since indictment and I have no objection to October 15th if it is understood we get a further adjournment at that time, but I have several cases, three cases in The Court of Appeals on October 20th and 21st and two of those are assigned murder cases, and they will take a great deal of my time.

The Court: The defendant is on bail.

Mr. Steinberg: Yes. One other factor, this year I accepted a job as Chairman of the Jewish Federation dinner, the Lawyers Committee, and it will be a dinner which will be in the middle of November. Again, I don't urge that everything else be set aside for my convenience but I will be in very bad shape about preparing a long difficult case. This case should take more than a month to try, two months to try.

The Court: Why the delay, a 1953 indictment?

Mr. Kidder: With the case of witnesses over in India it is not too easy to get them here. We wanted to try it immediately and made every effort to do so, but at that time counsel had a lot of perfectly legitimate excuses they presented, so I kept these witnesses around here quite a while hoping to get to trial, and then we tried to perpetuate the testimony, as I said, but that didn't work out, and, there are various government regulations and one thing and another prevented their return.

The Court: Are they Indians or Pakistinians?

Mr. Kidder: I don't know the real answer to that.

The Court: It is important.

Mr. Steinberg: They are Indians.

Mr. Kidder: I believe they are Indians.

Mr. Steinberg: Would your Honor put it down for around November 1st sometime, and I will try to go to trial with Mr. Kidder as soon as possible.

Mr. Kidder: I would like to put it down for a date that we are most agreed to try it.

Mr. Steinberg: I would like to try it.

Mr. Kidder: Does the new term start November 7?

Mr. Steinberg: Yes, November 7th.

Mr. Kidder: Then there is Election Day.

Mr. Steinberg: I am going to Mexico on December 19th, and we will have to get it tried. May we put it down for November 7th?

The Court: What date do you want?

Mr. Steinberg: November 7th and I will try to be ready to go to trial then.

The Court: That is just before Election Day.

Mr. Kidder: In the meantime I suppose I will have to find out exactly what Part I can try it in.

The Court: Why not make it November 14th?

(Conference had at the bench).

Mr. Steinberg: We can make it November 1st if you want to.

Mr. Kidder: That would be fine.

Mr. Steinberg: Make it November 1st.

The Court: November 1st for trial.

Mr. Steinberg: Thank you your Honor.

Mr. Kidder: Thank you.

E. Morris,
Official Stenographer.

Appendix D

COURT OF GENERAL SESSIONS

County of New York—Part V

Ind. No. 3115—53

The People

v

Louis Von Czeh [*sic*].

New York, N. Y., February 4, 1957

Before:

Hon. George M. Carney, J.

The defendant was indicted for the crime of grand larceny.

Appearances:

For the people:
J. Yeargin, Esq., and Jerome Kidder, Esq.
Assistant District Attorney

For the defendant:
H. Steinberg, Esq.

The Clerk of the Court: Louis Von Czeh [*sic*], on bail, Mr. Steinberg.

(Whereupon, there was a conference at the bench, off the record and out of the hearing of the defendant, between the Court and counsel for both sides, after which the following proceedings took place on the record in open court:

Appendix D

The Court: What is the application?

Mr. Steinberg: If your Honor please, I would like to note, on behalf of the defendant Von C'zeh [*sic*] that he is ready for trial, that he has previously made a motion to dismiss for lack of prosecution or, in the alternative, for a speedy trial.

I noted a violation of his constitutional rights at that time.

I understand Mr. Kidder's difficulty. He has been anxious to go to trial, too, but his witnesses haven't been here.

But from the defendant's point of view, I have to note that.

Mr. Kidder: I just want to say, your Honor, when the defendant was first indicted the People were ready to go to trial. The witnesses were here and it was at the defendant's opposition [*sic*] that adjournments were granted until they finally had to go back to India.

A motion was made to dismiss this case because of the failure of the People to proceed, and Judge McCullen, after hearing arguments, denied that motion, said that if we did not dispose of it by April of this year, he might then consider dismissing it.

I think, in view of the fact that the defendant was the reason why we couldn't get to trial in the first place, that any objection does not come with very good grace.

The Court: Where are your witnesses now—still in India?

Mr. Kidder: In India yes.

The Court: Are you expecting them back?

Mr. Kidder: Yes, your Honor, they told me they could get back here the first week in March. And I suggested March 11th, so I can have them here a few days ahead of time and know exactly where we stand on March 11th.

The Court: I will adjourn it to March 11th, at the People's request.

IRWIN S. SHAW
Official Stenographer

Appendix D

COURT OF GENERAL SESSIONS OF THE
COUNTY OF NEW YORK—PART FIVE

Indictment No. 3115—53

THE PEOPLE

against

LOUIS VON CSEH.

Before:

Hon. GERALD P. CULKIN, J.

ADJOURNMENT

New York, March 11th, 1957.

Indicted for Grand Larceny in the First Degree, etc.

Indictment filed October 10, 1953.

Appearances:

For the People:
Maurice Nadjari, Esq.,
Assistant District Attorney.

For the Defendant:
Harris Steinberg, Esq.

Appendix D

The Clerk: Trial Calendar. Louis Von Cseh. Mr. Steinberg.

(The defendant was arraigned at the bar.)

Mr. Steinberg: For the defendant.

Mr. Nadjari: If your Honor please, this case is to be tried by Mr. Kidder, who is presently on trial before Judge Carney and has been for the past month. And he is unable to determine when this trial will terminate, if your Honor please. He still has a good number of witnesses to go. In addition, I am familiar with some of the difficulties that this case—

The Court: All right. What date do you suggest?

Mr. Steinberg: It isn't as simple as that, with all due respect, your Honor. This case has been on since 1953. It has been put on repeatedly on the District Attorney's assertion that there are witnesses in India whom he needs. I have made a motion to dismiss for lack of prosecution, because the defendant is ready to go to trial and his Constitutional rights have been violated.

The Court: We'll mark the case ready and passed, subject to Mr. Kidder's availability.

Mr. Steinberg: May we have a statement—are these witnesses going to be here, so we know we'll get ready?

Mr. Nadjari: There are letters which are now in the file, which have been received by the District Attorney's Office indicating that one of the witnesses, who is a necessary party in this case, has been ill, and that he definitely intends to come to this City for the purpose of this trial as soon as he is recovered. There is also a letter from his physician, indicating the accuracy of his statement.

We believe that if this—We do believe this witness will be available in May, the beginning of May, and hope we can get an adjournment until that time.

Mr. Steinberg: I respectfully protest, sir, to any such adjournment. I say this man's Constitutional rights have already been violated, and they will be further violated. To my mind, this goes contrary to the decision of Judge McCullen, which I will be glad to hand up to your Honor. I would like you to look at it, and also the minutes of the last session. (Handing papers to the Court, who peruses same.)

Your Honor will note from the minutes that at the last time this case was on the calendar it was stated by Mr. Kidder that at this time, today, he would have a definite statement that we would be marked a definite date for trial or the case would be dismissed otherwise.

The Court: All right, counsellor, he indicated he would be ready on March 11th. Now there is an intervening factor, that one of the witnesses is ill.

Mr. Steinberg: With all due respect, we have heard this sort of thing from this witness, with no supporting statement: just rumors: a man writes a letter from India—

Mr. Nadjari: There is a physician's letter attached to this communication by the witness.

The Court: It is indicated, in the first minutes here, counsel, that the People stated that they were ready originally.

Mr. Steinberg: That was when the indictment was filed, and they wanted to go to trial two days after the indictment was filed, in a fifty-count indictment. I said I would be ready to take depositions from this man.

The Court: There are equities on both sides.

We'll put it over until May.

Mr. Steinberg: May I respectfully note my objection to that.—

The Court: Yes.

Appendix D

Mr. Steinberg: —and the fact that we claim the defendant's Constitutional rights are violated by this untoward and unduly lengthy adjournment!

The Court: All right, counsel.

May 7th.

Notify Mr. Kidder that the case is set for May 7th, and he better make some arrangements with the witnesses to come here from India.

Mr. Nadjari: Yes, sir. The office is in constant communication with these people. We are carrying on quite a correspondence.

The Court: All right.

I'm sorry, counsellor, you're inconvenienced.

Mr. Steinberg: Bail continued?

The Court: Bail continued.

William Roven,
Official Stenographer.